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AFSCME LOCAL 101

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
AT SAN JOSE**

SAN JOSE POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSÉ, BOARD OF
ADMINISTRATION FOR POLICE AND FIRE
DEPARTMENT RETIREMENT PLAN OF
CITY OF SAN JOSE, and DOES 1-10,
inclusive,

Defendants.

Consolidated Case No. 1-12-CV-225926

*[Consolidated with Case Nos. 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574,
1-12-CV-227864, and 1-12-CV-233660]*

ASSIGNED FOR ALL PURPOSES TO:
JUDGE PATRICIA LUCAS
DEPARTMENT 2

**AFSCME LOCAL 101'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION FOR ATTORNEYS' FEES
UNDER CCP SECTION 1021.5 AND
MOTION FOR PAYMENT OF EXPENSES
OF PROOF UNDER CCP SECTION
2033.420**

AND RELATED CROSS-COMPLAINT AND
CONSOLIDATED ACTIONS

Hearing Date: September 25, 2014
Hearing Time: 9:00 a.m.
Courtroom: 2
Judge: Honorable Patricia Lucas
Action Filed: June 6, 2012
Trial Date: July 22, 2013

REQUEST FOR JUDICIAL NOTICE

Plaintiff/petitioner AFSCME Local 101 hereby requests the court to take judicial notice
pursuant to California Evidence Code Sections 450 *et seq.*, and in accordance with California Rules


of Court 3.1113, subdivision (l) and 3.1306, subdivision (c), of the following material, a true and correct copy of which are attached hereto:

Exhibit A	City of San José's federal lawsuit re Measure B, filed June 5, 2012
Exhibit B	Memo of Points and Authorities in support of AFSCME's Motion to Dismiss City of San José's federal lawsuit re Measure B, filed 8/3/12
Exhibit C	<i>Reed, et. al. v. Bowen, et. al.</i> Verified Writ Petition filed Feb. 2014 in Sacramento Superior Court
Exhibit D	Stipulation between parties admitting certain exhibits into evidence, signed by court on July 29, 2013
Exhibit E	Relevant pages of AFSCME's Complaint in this case
Exhibit F	RJN filed by AFSCME and SJREA prior to trial in this case

Exhibits A-F are properly subject to judicial notice pursuant to Evidence Code sections 453 and 452(d) ("Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States."). For this reason, plaintiff respectfully requests that the court take judicial notice of those documents.

Dated: September 18, 2014

BEESON, TAYER & BODINE, APC

By: 
VISHTASP M. SOROUSHIAN
Attorneys for AFSCME LOCAL 101

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PROOF OF SERVICE

SANTA CLARA SUPERIOR COURT

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

**AFSCME LOCAL 101'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
MOTION FOR ATTORNEYS' FEES AND
MOTION FOR PAYMENT OF EXPENSES OF PROOF
UNDER CCP SECTION 2033.420**

☒ **By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☒ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, September 18, 2014.



Esther Aviva

SERVICE LIST

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AND

Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112-CV-226574)

AND

Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112-CV-226570)

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AND

Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1961 SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV225928)

AND

Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES' RETIREMENT PLAN (Santa Clara Superior Court Case Nos. 112CV226570 and 112CV22574)

AND

Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV227864)

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EXHIBIT A

E. 11.19

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FILED
 JUN - 5 2012
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

ADR

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CITY OF SAN JOSE,

Case No.

C12-02904

Plaintiff,

**COMPLAINT FOR DECLARATORY
RELIEF**

v.

[28 U.S.C. Section 2201(a)]

14 SAN JOSE POLICE OFFICERS'
 ASSOCIATION; SAN JOSE
 15 FIREFIGHTERS, I.A.F.F. LOCAL 230;
 MUNICIPAL EMPLOYEES' FEDERATION,
 16 AFSCME, LOCAL 101; CITY
 ASSOCIATION OF MANAGEMENT
 17 PERSONNEL, IFPTE, LOCAL 21.

Trial Date: None Set

Defendants.

INTRODUCTION

21 1. This declaratory relief action is brought to resolve a dispute arising under the
 22 United States Constitution, including Article 1, § 10 -- the federal "contracts clause" -- and the 5th
 23 and 14th Amendments. Under 28 U.S.C. § 1367(a), this Court also has jurisdiction over the state
 24 law issues presented by this action, because they are part of the same case or controversy as the
 25 federal law issues.

26 2. The City of San Jose ("the City") is committed to providing services that are
 27 essential to the quality of life and well-being of San Jose residents, including police protection;
 28 fire protection; street maintenance; libraries; and community centers ("Essential City Services").

LHK
PSG

1 3. The City's ability to provide Essential City Services has been and continues to be
2 threatened by dramatic budget cuts caused in large part by the climbing and unsustainable cost of
3 employee benefit programs, exacerbated by the economic crisis. For example, in the last few
4 years, City payments for employee retirement costs have dramatically increased, from \$107
5 million in 2009-10, to \$245 million in 2011-12, and are projected to be \$319 million in 2014-15 –
6 approximately 24% of the City's General Fund. In March 2012, Moody's downgraded San Jose's
7 general obligation and lease revenue bonds, in part because of San Jose's "[i]ncreasing retirement
8 cost burden."

9 4. In this context, the City Council voted to place Measure B on the ballot for the June
10 5, 2012 election. A true and correct copy of Measure B is attached hereto as Exhibit 1.

11 5. Measure B is intended to adjust post-employment benefits in a manner that protects
12 the City's viability and public safety, at the same time allowing for the continuation of fair post-
13 employment benefits for the City's workers. Without the reasonable cost containment provided in
14 Measure B, the economic viability of the City, and hence, the City's employment benefit
15 programs, will be placed at risk.

16 6. An actual controversy has arisen and now exists between the parties relating to the
17 legality of Measure B for which the City desires a declaration of rights. A declaratory judgment is
18 necessary to confirm that Measure B does *not* violate the contracts clauses contained in the federal
19 and state constitutions, or federal or state due process guarantees, and does *not* impair any vested
20 rights. This judgment is necessary because the defendants contend, on behalf of their members,
21 that Measure B contains provisions that violate employee vested rights to certain retirement
22 contributions and benefits and therefore is (all or in part) a violation of the contracts clauses, and
23 federal and state due process guarantees.

24 7. The City contends that Measure B does not violate employee vested rights. San
25 Jose is a Charter City with "plenary authority" to provide in its Charter for the compensation of its
26 employees. The San Jose City Charter reserves the City's right to create and amend the City's
27 retirement plans. The City's Charter and Municipal Code permit modification of employee
28 contribution rates to the City's retirement systems to defray unfunded liabilities as well as the

1 other changes contained in Measure B. City practices confirm this authority. For these reasons,
2 the City has retained the right for the City's voters to make changes to employee contribution rates
3 and to make the other changes contained in Measure B.

4 8. This action does not seek to recover any damages, attorneys' fees or costs against
5 the defendants, or any employees or retirees who may be impacted in this action. This is solely an
6 action for declaratory relief to confirm the legality of Measure B, so that the City can begin
7 implementing its provisions in good faith.

8 9. The City Council reasonably and responsibly anticipated this legal dispute at the
9 time it voted to place Measure B on the ballot, and thus incorporated a grace period into the
10 measure with respect to the increased employee contributions – the component of the Measure
11 with the most direct economic impact on employees. The grace period delays implementation of
12 increased pension contributions (which are an important component of the cost containment /
13 sustainability features in Measure B) until June 23, 2013. This grace period is intended to permit
14 adjudication of the legality of this component of Measure B before it impacts City employees

15 10. To implement Measure B in its entirety, the City must develop administrative
16 procedures and draft implementing ordinances for submission to the City Council. The City must
17 move expeditiously in these efforts, in order to implement the various provisions of Measure B.

18 11. In light of the threat to Essential City Services, the express grace period referenced
19 above, and the need for the City to begin implementation of Measure B, it is urgent that the Court
20 swiftly adjudicate the legality of Measure B. The City asks this Court to place this matter on a
21 preferential and expedited schedule to confirm that the changes enacted in Measure B are lawful,
22 and thus initially resolve the controversy.

23 PARTIES

24 12. Plaintiff City of San Jose is a California municipal corporation, organized as a
25 Charter City under the California Constitution and laws of the State of California. The City
26 provides its residents with essential services such as police protection, fire and emergency
27 response, libraries, parks and community centers. The City has provided its employees with a

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1 generous variety of fringe benefits, including two defined benefit pension plans and retiree health
2 benefits, among other benefits.

3 13. The San Jose Police Officers Association ("SJPOA") is an employee association
4 that represents San Jose's police officers and negotiates with the City over the wages, hours and
5 other terms and conditions of employment for its members. The SJPOA contends that all or part
6 of Measure B violates the vested rights of SJPOA members to certain retirement and other post-
7 employment benefits.

8 14. The San Jose Fire Fighters, I.A.F.F. LOCAL 230 ("LOCAL 230") is an employee
9 association that represents San Jose's firefighters and negotiates with the City over wages, hours
10 and other terms and conditions of employment for its members. LOCAL 230 contends that all or
11 part of Measure B violates the vested rights of LOCAL 230 members to certain retirement and
12 other post-employment benefits.

13 15. The Municipal Employees Federation ("MEF"), AFSCME, Local 101, is an
14 employee organization that represents a wide range of City employees and negotiates with the City
15 over wages, hours and other terms and conditions of employment for its members. MEF contends
16 that all or part of Measure B violates the vested rights of its members to certain retirement and
17 other post-employment benefits.

18 16. The City Association of Management Personnel, IFPTE, Local 21 ("CAMP") is an
19 employee organization that represents City management level employees and negotiates with the
20 City over wages, hours and other terms and conditions of employment for its members. CAMP
21 contends that all or part of Measure B violates the vested rights of its members to certain
22 retirement and other post-employment benefits.

23 JURISDICTION AND VENUE

24 17. This Court has subject matter jurisdiction over this matter because one or more of
25 the disputes concerning Measure B arise under the federal Constitution. Further, Plaintiffs'
26 contentions concerning the parallel provisions in the California Constitution arise from the same
27 transactions or occurrences as the federal claims. The Court has personal jurisdiction over the
28 parties because they are located and conduct business in this judicial district and this action arises

1 from conduct occurring in the City of San Jose.

2 18. Venue is proper in this district and this division because the City and Defendants
3 are located in this district and division.

4 **INTRADISTRICT ASSIGNMENT**

5 19. Plaintiff City of San Jose is located in Santa Clara County. Defendants are
6 employee organizations that represent City of San Jose employees affected by Measure B and on
7 information and belief have offices located in Santa Clara County.

8 **GENERAL ALLEGATIONS**

9 20. San Jose provides generous retirement and post-employment benefits for its
10 employees. The City provides two defined benefit pension plans for its employees, one for police
11 and fire employees ("Police and Fire Plan"), the other for all other "miscellaneous" employees
12 ("Federated Plan"), described generally as follows. Under the Police and Fire Plan, an employee
13 can retire at age 50 with 25 years of service, at age 55 with 20 years of service, or at any age with
14 30 years of service. The employee receives 2.5% of final compensation for each of the first 20
15 years of service. For each year over 20 years, police receive an additional 4% (police) . After 20
16 years, fire fighters receive 3% for all years of service. Police and fire employees receive monthly
17 payments constituting up to 90% of their final monthly compensation and a yearly COLA of 3%
18 per year.

19 21. Under the Federated Plan, an employee can retire at age 55 with 5 years of service
20 or at any age with 30 years of service. The employee receives 2.5% of final compensation for
21 each year of service, and receive monthly payments constituting up to 75% of final monthly
22 compensation, and a yearly COLA of 3% per year.

23 22. The City's' yearly cost of pay for employee retirement benefits has dramatically
24 increased, and has thus negatively impacted the City's ability to provide Essential City Services.
25 The increase in pension costs is attributable to enhanced retirement benefits, increased employee
26 salaries, and the downturn in the financial markets.

27 23. Between Fiscal Years ("FY") 1998-99 to 2009-10, the City's annual contributions
28 for pension and retiree health benefits increased from approximately \$54 million to \$107 million.

(City Auditor Report, "Pension Sustainability: Rising Costs Threaten The City's Ability to Maintain Service Levels," pp. 18-22.) For FY 2012-13, the City's annual costs are projected to be \$245 million, with contribution rates of 66% for police and fire and 52% for federated employees. By FY 2014-15, the City's annual contribution are projected to be \$319 million, with contribution rates of more than 78% of payroll for police and fire and 65% of payroll for Federated employees. (City of San Jose, Future Retirement Costs Study Session, March 29, 2012)

24. Because of rising retirement costs, the City has been forced to lay off employees and reduce services. In the last few years, staffing has been reduced as follows: police officers (22%), fire department (13.5%) (before restoration from federal grants), library staff (26%), and parks and recreation staff (35%). These cuts have resulted in fewer police patrols, an increase in violent crime, and reduced fire, library, parks and other community services. ("Fiscal and Service Level Emergency Report; An Evaluation of Conditions in the City of San Jose," Appendix A – Impacts on Services, pp. 270-271, 289-290, 293, 297, 309-310.)

25. On March 6, the City Council voted to call an election on June 5, 2012 "for the purpose of voting on a ballot measure to amend the San Jose City Charter to add a new Article XV-A." As presented to the voters, the Measure B reads: "PENSION MODIFICATION. Shall the Charter be amended to modify retirement benefits of City employees and retirees by: increasing employees' contributions, establishing a voluntary reduced pension plan for current employees, establish pension cost and benefit limitations for new employees, modify disability retirement procedures, temporarily suspend retiree COLAs during emergencies, require voter approval for increases in future pension benefits."

26. Measure B is entitled "The Sustainable Retirement Benefits and Compensation Act." The "Findings" for the Act state that the City's ability to provide its citizens with "Essential City Services" -- such as police and fire protection, street maintenance and libraries -- is threatened by budget cuts. (Section 1501-A) The stated "Intent" of the Act is to "ensure the City can provide reasonable and sustainable post-employment benefits while at the same time delivering Essential City Services." (Section 1502-A)

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1 27. Measure B contains the following provisions, among others:

2 **A. Employee Contribution Rates. (Section 1506-A)** Beginning June 23, 2013, the
3 Act requires that the compensation of current employees be adjusted to defray the unfunded
4 liabilities in their pension plans. The Act requires employees to make additional contributions to
5 the retirement system in increments of 4% of pensionable pay per year up to a maximum of 16%
6 of pensionable pay per year, but no more than 50% of the costs per year to amortize any pension
7 plan unfunded liabilities. The adjustments in compensation will be treated as additional retirement
8 contributions to employees' retirement accounts

9 **B. VEP (Section 1507-A).** Under the Act, as an alternative to having their pay
10 adjusted, employees may voluntarily opt into a "Voluntary Election Program." Under this
11 program, employees retain their yearly accrual rate for years already served (2.5% per year
12 Federated and 2.5%- 4% Police and Fire), retain their maximum retirement benefit as a percentage
13 of pay (75% Federated, 90% Police and Fire), pay employee contributions based on the existing
14 Charter formula, but do not pay for any unfunded liability.

15 In exchange for no reduction in pay, the VEP provides a different pension plan. The VEP
16 reduces the accrual rate for future service (2% per year), raises the eligibility age for retirement
17 over time (55 to 62 for miscellaneous, 50 to 57 for safety), limits cost of living adjustments to a
18 maximum of 1.5% based on the CPI, and requires "final compensation" to be determined by an
19 average of three highest years of pay instead of one, among other changes.

20 Implementation of the VEP is contingent upon IRS approval. Unless and until the VEP is
21 implemented, employees are subject to the pay adjustment in Section 1506-A.

22 **C. Disability Retirements (Section 1509-A).** Under the Act, to receive a disability
23 retirement, City employees "must be incapable of engaging in any gainful employment for the
24 City, but not yet eligible to retire." City employees are considered "disabled" if they "cannot do
25 the work they did before" and "cannot perform any other jobs described in the City's classification
26 plan" or in the case of safety employees, "cannot perform any other jobs described in the City's
27 classification plan in the employee's department."

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1 Determinations of disability will be made by an independent panel of medical experts
 2 appointed by the City Council, with a right to appeal to an administrative law judge

3 **D. Emergency Measures to Contain Cost of Living Adjustments (Section 1510-A).**

4 Under the Act, if the City Council “adopts a resolution declaring a fiscal and service level
 5 emergency, with a finding that it is necessary to suspend increases in cost of living payments to
 6 retirees,” the City may temporarily suspend cost of living adjustments in whole or part for up to
 7 five years.

8 **E. Supplemental Payments to Retirees (Section 15611-A).** The Act discontinues

9 the Supplemental Retiree Benefit Reserve and returns its assets to the appropriate retirement trust
 10 fund. Any supplemental payments to retirees may not be funded from plan assets.

11 **F. Savings. (Section 1514-A).** In the event a court determines that Section 1506-A is

12 illegal, then to the maximum extent permitted by law, an equivalent amount of savings shall be
 13 obtained through pay reductions, which shall not exceed 4% per year, capped at a maximum of
 14 16% of pay. The Measure includes additional provisions for severance of any provisions that are
 15 somehow found unenforceable.

16 **G. Future Changes (Sections 1503-A, 1504-A, 1505-A).** The Act supersedes all

17 other conflicting or inconsistent “wage, pension or post-employment benefit provisions in the
 18 Charter, ordinances, resolutions or other enactments.” The Act reserves to the Voters the right to
 19 consider any change “related to pension and other post-employment benefits.” Subject to the
 20 limits contained in the Act, the City Council has the authority to take all actions necessary to
 21 effectuate the Act, with a goal that implementing ordinances become effective by September 30,
 22 2012. Many of the features of Measure B call for ordinances to implement Measure B’s
 23 provisions.

24 **FIRST CAUSE OF ACTION**
 25 **(Declaratory Judgment, 28 U.S.C. §2201(a))**

26 28. Plaintiff incorporates by reference all paragraphs set forth above as though fully set
 27 forth herein.

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29. Plaintiff seeks a declaratory judgment that the following provisions of Measure B do not violate: the contracts clause of the United States Constitution, Article I, §10; the contracts clause of the California constitution, Article I, § 9; the federal due process guarantees of the 5th and 14th amendments, state due process constitutional provisions; or promissory estoppel:

A. Section 1506-A, Employee contribution rates.

B. Section 1507-A, Voluntary election program ("VEP").

C. Section 1509-A, Disability retirement.

D. Section 1510-A, Emergency measure to contain COLAs.

E. Section 1511-A, Supplemental retiree benefit reserve.

F. Section 1514-A, Savings through compensation adjustment.

G. Sections 1503-A, 1504-A, 1505-A, Limits on future changes to retirement benefits.

30. An actual controversy over the legality of Measure B has arisen between the City and Defendants. The City contends that the employee compensation, contributions and benefits affected by Measure B are not vested contractual rights under the City's Charter, Municipal Code and past practices, and therefore Measure B does not violate the federal or state contracts clauses, federal or state due process or promissory estoppel. Defendants contend that some or all of the employee compensation, contributions and benefits affected by Measure B are vested contractual rights and that parts or all of Measure B violates their constitutional rights.

31. A judicial decision is necessary to determine whether Measure B can be implemented to change the benefits addressed in the Measure. The decision is urgently needed because the Measure provides that employees will begin paying the increased contribution rate as of June 23, 2013, and because if the Measure is invalidated, the City must move quickly to reduce personnel costs by other methods such as layoffs and further reductions in services.

32. This suit seeks this Court's ruling declaring that the City may implement Measure B.

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PRAYER

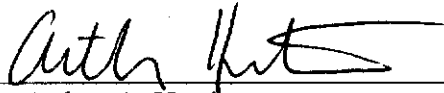
WHEREFORE, Plaintiff City of San Jose prays for relief as follows:

1. For a judicial declaration under 28 U.S.C. § 2201(a) (The Declaratory Relief Act) that Measure B does not violate the contract clauses of the federal or state constitutions, federal or state constitutional rights to due process, or promissory estoppel; and
2. For a judicial declaration that the City may implement Measure B as enacted by the voters.

DATED: June 5, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

By:



Arthur A. Hartinger
Attorneys for Plaintiff
City of San Jose

1898349.1

EXHIBIT 1

LIST OF LOCAL MEASURES
PRESIDENTIAL PRIMARY ELECTION
June 5, 2012

City of San José
Majority Vote

Measure B

PENSION MODIFICATION Shall the Charter be amended to modify retirement benefits of City employees and retirees by: increasing employees' contributions, establishing a voluntary reduced pension plan for current employees, establish pension cost and benefit limitations for new employees, modify disability retirement procedures, temporarily suspend retiree COLAs during emergencies, require voter approval for increases in future pension benefits?	YES
	NO

Full Text of Measure B

Resolution on Measure B

City Clerk's Impartial Analysis

Argument in Favor

Argument Against

Rebuttal to Argument in Favor of Measure B

Rebuttal to Argument Against Measure B

FULL TEXT OF MEASURE B

**ARTICLE XV-A
RETIREMENT**

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as:
"The Sustainable Retirement Benefits and Compensation Act."

Section 1501-A: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

February 8, 2012

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

Section 1502-A: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

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The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503.

Section 1503-A. Act Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than September 30, 2012.

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Section 1504-A. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 1505-A. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees subject to the terms of this Act.

Section 1506-A. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to

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amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.

(c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

Section 1507-A: One Time Voluntary Election Program ("VEP")

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of

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IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

- (i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.
- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City

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Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017.
- (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
- (vi) “Final compensation” shall mean the average annual pensionable pay of the highest three consecutive years of service.
- (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time

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worked (including paid leave, but not including overtime).

(c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

(d) VEP Survivorship Benefits.

(i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.

(ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

(i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

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- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 1508-A: Future Employees - Limitation on Retirement Benefits - Tier 2

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program - for new employees - shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

- (a) The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City's cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent

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the total City contribution does not exceed 9%. If the City's share of a Tier 2 defined benefit plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose - San Francisco - Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, "final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 2% per year of service, not to exceed 65% of final compensation.

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(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

Section 1509-A: Disability Retirements

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

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(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

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Section 1510-A: Emergency Measures to Contain Retiree Cost of Living Adjustments

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

Section 1511-A: Supplemental Payments to Retirees

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

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Section 1512-A: Retiree Healthcare

- (a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.
- (b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.
- (c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 1513-A: Actuarial Soundness (for both pension and retiree healthcare plans)

- (a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.
- (b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually

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through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

- (i) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
- (ii) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

- (i) the funding objectives and actuarial assumptions of the plans; and
- (ii) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

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Section 1514-A: Savings

In the event Section 6 (b) is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 4% of compensation each year, capped at a maximum of 16% of pay.

Section 1515-A: Severability

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

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(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

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RESOLUTION NO. 76158

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE REPEALING RESOLUTION NO. 76087 AND CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE, AT A SPECIAL MUNICIPAL ELECTION TO BE HELD ON JUNE 5, 2012, A BALLOT MEASURE PROPOSAL TO AMEND THE SAN JOSE CITY CHARTER TO ADD A NEW ARTICLE XV-A TO REFORM CITY PENSIONS AND BENEFITS PROVIDED TO CURRENT EMPLOYEES AND ESTABLISH REDUCED PENSIONS AND BENEFITS FOR NEW EMPLOYEES AND TO PLACE OTHER LIMITATIONS ON PENSIONS AND BENEFITS

WHEREAS, Charter Section 1600 authorizes the City Council to set the date for a Special Municipal Election; and

WHEREAS, the City Council adopted Resolution No. 76087 and approved a ballot measure for the June 5, 2012 election but directed the City Clerk not to submit the ballot measure to the Registrar of Voters to allow time for further negotiations on the ballot measure language; and

WHEREAS, the City Council now desires to submit to the electors of the City of San José at a Special Municipal Election a ballot measure proposal to amend the San José City Charter to add a new Article XV-A to reform pensions and benefits for current employees, to establish reduced pensions and benefits for new employees and to place other limitations on pensions and benefits; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. Resolution No. 76087 is hereby repealed.

SECTION 2. A Special Municipal Election is hereby called and ordered to be held in the City of San José on June 5, 2012, for the purpose of voting on a ballot measure to

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amend the San José City Charter to add a new Article XV-A to reform pensions and benefits for current employees and to establish different pensions and benefits for new employees and to place other limitations on pensions and benefits. The proposed City Charter amendment is attached to this Resolution as Exhibit A.

SECTION 3. The ballot measure will be placed on the ballot for the June 5, 2012 election in the following form:

PENSION REFORM

To protect essential services, including neighborhood police patrols, fire stations, libraries, community centers, streets and parks, shall the Charter be amended to reform retirement benefits of City employees and retirees by: increasing employees' contributions, establishing a voluntary reduced pension plan for current employees, establish pension cost and benefit limitations for new employees, reform disability retirements to prevent abuses, temporarily suspend retiree COLAs during emergencies, require voter approval for increases in future pension benefits?

YES	
NO	

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SECTION 4. The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County to render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast.

SECTION 5. The City Council hereby requests that the Registrar of Voters of the County of Santa Clara consolidate the Special Municipal Election called and ordered to be held on June 5, 2012 with any other election that may be held on that date.

SECTION 6. The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

SECTION 7. The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

SECTION 8. The City Council hereby directs the City Clerk to take all actions necessary to facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies with regard to the conduct of the Special Municipal Election.

SECTION 9. Pursuant to Section 12111 of the California Elections Code and Section 6061 of the California Government Code, the City Council hereby directs the City Clerk to (a) cause a synopsis of the proposed measure to be published in the San José Mercury News, a newspaper of general circulation within the City of San José; (b)

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consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) transmit a copy of the Measure to the City Attorney and cause the following statement to be printed in the impartial analysis to be prepared by the City Attorney: "If you would like to read the full text of the measure, see www.sanjoseca.gov/clerk/elections/Election.asp or call 408-535-1260 and a copy will be sent at no cost to you."; and (d) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

SECTION 10. Pursuant to Sections 9282 and 9285 of the California Elections Code, the City Council hereby approves the submittal of arguments for and against the ballot measure, if any, and authorizes the Mayor to author and submit a ballot measure argument in favor of the ballot measure and also approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes any member or members of the City Council to author and submit a rebuttal, if any.

SECTION 11. The City Council hereby directs the City Clerk to transmit a copy of the measure qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis.

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ADOPTED this 6th day of March, 2012, by the following vote:

AYES: CONSTANT, HERRERA, LICCARDO, NGUYEN,
 OLIVERIO, PYLE, ROCHA; REED.

NOES: CAMPOS, CHU, KALRA.

ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



DENNIS D. HAWKINS, CMC
City Clerk

EXHIBIT B

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
AT SAN JOSÉ

CITY OF SAN JOSÉ,

Defendant,

v.

SAN JOSÉ POLICE OFFICERS'
ASSOCIATION; SAN JOSÉ FIREFIGHTERS,
I.A.F.F. LOCAL 230; MUNICIPAL
EMPLOYEES' FEDERATION, AFSCME,
LOCAL 101; CITY ASSOCIATION OF
MANAGEMENT PERSONNEL, IFPTE
LOCAL 21,

Defendants.

Case No. 5:12-CV-02904-LHK

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO DISMISS FIRST AMENDED
COMPLAINT**

[FED. R. CIV. PROC. 12(B)]

**[CONCURRENTLY FILED REQUEST FOR
JUDICIAL NOTICE]**

Hearing Date:	October 4, 2012
Hearing Time:	1:30 p.m.
Courtroom:	Department 8
Judge:	Lucy H. Koh
Complaint Filed:	June 5, 2012
Trial Date:	None Set

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6	28 U.S.C. § 1367(c)(1)	12
7	28 U.S.C. § 1367(c)(2)	12
8	28 U.S.C. Section 1367(c)(4)	12
9	Federal Rules of Civil Procedure (“FRCP”), Rule 12(b)	3
10	Gov. Code Sect. 945.3	6
11	Pen. Code Sect. 186.22, subd. (b)(1)	6

CONSTITUTIONAL PROVISIONS

14	Article III of the United States Constitution.....	11
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I. INTRODUCTION

By this motion, Defendant Municipal Employees' Federation ("MEF") of American Federation of State, County and Municipal Employees, Local 101 ("AFSCME" or "Union") seeks an order either dismissing with prejudice or staying the City of San José's ("City") First Amended Complaint ("FAC"). AFSCME joins and incorporates into this motion as though set forth within, the arguments advanced by Co-Defendants the San José Police Officers' Association ("POA") and the San José Firefighters, I.A.F.F., Local 230 ("Firefighters") in the memoranda of points and authorities in support of their motions pursuant to Rule 12(b) of the Federal Rules of Civil Procedure (respectively "POA Motion" and "Firefighters' Motion"). Pursuant to the Court's July 24, 2012, "Stipulation and Order Re: Consolidated Briefing on Motions to Dismiss," defendant MEF submits alternative grounds for dismissal of the City's complaint. In particular, the City's complaint should be dismissed because although the City's premature declaratory action purports to anticipate federal questions, AFSCME has raised *no* such federal questions with respect to the City's ordinance. Rather, it has pursued its claims in state court strictly under state law. Because, as contended by the City, the issues raised by the parties are novel and/or raise questions undecided by state law, any decision rendered by this court or the Ninth Circuit Court of Appeals will have no precedential value with respect to such issues of state law. Accordingly, proceeding to hear the City's action will neither serve the important goal of judicial efficiency nor settle the issues raised with respect to individuals or entities not a party to this action.

As a case of first impression involving a novel and controversial local law, it is important that any disposition of the issues presented establish precedent to guide the state courts in resolving similar future conflicts. Decisions issued by this Court or the Ninth Circuit Court of Appeals will have no *stare decisis* affect within the state court system. This is because the state courts have not yet interpreted Measure B or the vested rights doctrine in the context of the amendments made by Measure B to the City's Federated Retirement System. Any interpretation adopted by a federal court will not bind the courts of the state. Similarly, any decision by the federal courts with respect to the state constitution and common law doctrines invoked in this case will have no binding affect on the state courts, and a contrary decision by the state's appellate courts will—in fact—bind federal court.

with respect to matters of state law. Recently, in *Retired Employees Assn. of Orange County, Inc. v. County of Orange*, 610 F.3d 1099 (9th Cir. 2010) (hereinafter “*Orange County*”), the Ninth Circuit was unable to render a decision with respect to California’s vested rights doctrine, and, consequently, certified a question to the California Supreme Court and adopted its answer. (*Retired Employees Ass’n of Orange County, Inc. v. County of Orange*, 663 F.3d 1292 (9th Cir. 2011) (hereinafter “*Orange County II*”).) This process added inefficiency to resolving the parties’ dispute and greatly delayed disposition of the case. (*Id.* (“In light of the nature of the dispute in this case, *and in light of the delay that has already taken place*, we encourage the district court to act promptly.”) (emphasis added).)

Finally, a close reading of AFSCME’s complaint indicates that no questions of federal law are raised. However, even if the court does consider federal constitutional questions raised by the City in its anticipatory declaratory action, any such questions decided by this court or the Ninth Circuit will not bind the state courts. Because a decision in this case has absolutely no precedential value in the state courts, the prudent and efficient course here is to dismiss the City’s anticipatory action with prejudice and/or abstain in order to allow the state courts to establish precedent with respect to this novel area of legislation.

In the alternative, this court should refuse to exercise supplemental jurisdiction over the state law claims in order to afford state courts the opportunity to clarify and develop state law in this area and in the interest of “economy, convenience, fairness and comity.” (*Executive Software N. Am., Inc. v. United States Dist. Court*, 24 F.3d 1545, 1557-58 (9th Cir.1994), *overruled on other grounds by California Dept. of Water Resources v. Powerex Corp.*, 533 F.3d 1087 (9th Cir. 2008) (hereinafter “*Executive Software*”).) Furthermore, if this court dismisses the federal law claims for lack of subject matter jurisdiction, it is *required* to dismiss the state law claims as well.

II. SUMMARY OF RELEVANT ALLEGATIONS AND PROCEDURAL BACKGROUND

In the interest of brevity, defendant MEF adopts and incorporates the statement of facts and procedure as set forth in the POA’s and Firefighters’ Motions, with a few additions pertinent to AFSCME. Subsequent to the filing of those motions, the court set a hearing on all four defendants’ Motions to Dismiss the FAC for October 4, 2012, pursuant to a joint stipulation by all parties.

AFSCME, Local 101 represents the members of MEF and the Confidential Employees' Organization ("CEO"). Although CEO is a party to AFSCME's parallel state court action (*AFSCME, Local 101 v. City of San José*, Santa Clara Case No. 1-12-CV227864), CEO was not named in this suit. MEF and CEO members are non-supervisory, non-public safety city employees. AFSCME members are a part of the City's Federated City Retirement System and Federated City Retirement Plan. MEF's members are directly affected by Measure B and its elimination of the vested right to receive the full measure of promised retirement and other post-employment benefits. Measure B also imposes on MEF's members certain funding obligations that AFSCME contends are unconstitutional under the California Constitution. As is admitted by all parties, Measure B is the first local ordinance adopted by a California charter city that impedes upon public employees' vested rights to retirement benefits in such a manner, and that imposes such *ultra vires* funding obligations on city employees.

III. AUTHORITY FOR MOTION TO DISMISS

A party may present a motion to dismiss for reasons not enumerated by the Federal Rules of Civil Procedure ("FRCP"), Rule 12(b), and such motion is subject to regular motion proceedings. (*Wyatt v. Terhune*, 315 F.3d 1109, 1119 (9th Cir. 2003); *Ritza v. International Longshoremen's & Warehousemen's Union*, 837 F.2d 365, 369 (9th Cir. 1988).)

Furthermore, a party may challenge the court's subject matter jurisdiction (FRCP, Rule 12(b)(1)) because supplemental jurisdiction is improper according to 28 U.S.C. Section 1367. (See *Sparrow v. Mazda American Credit*, 385 F.Supp.2d 1063 (E.D. Cal. 2005); *A.J. Oliver v. Longs Drug Stores California*, 2008 WL 544399 (S.D. Cal. 2008).)

IV. ARGUMENT

This case presents issues of extreme significance to the state of California, its cities and counties, and public sector employees and retirees. The outcome to the litigation over Measure B has the potential to provide guidance and set the contours on what this state's municipalities can and cannot do regarding the curtailing of public employee retirement security. No city or local agency has gone as far as Plaintiff in altering earned benefits or changing the benefits applicable to current employees (as opposed to future employees). The City has attempted, but cannot, join every interested party to this litigation, and so no decision by this – or any other – federal court can have a

1 binding or precedential effect with respect to such non-parties. This is because California courts are
 2 free to disregard decisions rendered by federal courts that purport to decide matters of state law.
 3 With respect to the instant case, any decision is essentially advisory and will have no implication
 4 beyond these immediate proceedings. The advisory nature of the declaratory judgment the City seeks
 5 is especially apparent where AFSCME has raised no issue of federal law in its state court action.

6 On the other hand a decision rendered by a state court — of which all defendants are presently
 7 seeking in state court actions — will set precedent within the California court system and may even
 8 establish precedent for future litigation in federal court. (*See, e.g., Retired Employees Ass'n of*
 9 *Orange County, Inc. v. County of Orange*, 52 Cal.4th 1171 (2011); *Orange County II, supra*, 663
 10 F.3d at 1292.) Therefore, this court should dismiss the case in its entirety and allow the courts of
 11 California to render a decision, which will lead to establishing binding precedent.

12 In the alternative, this court should at least dismiss the state law claims and allow the parties
 13 to proceed in state court. (Of course, pursuant to Ninth Circuit precedent, if this court dismisses the
 14 federal causes of action for lack of subject matter jurisdiction, it cannot exercise supplemental
 15 jurisdiction over the state law claims and *must* dismiss them.)

16 Furthermore, this court should exercise its discretion and dismiss the state law claims
 17 pursuant to 28 U.S.C. Section 1367(c) in the interest of “economy, convenience, fairness, and
 18 comity.” Again, this circuit’s inability to render a decision with precedential value strongly weighs in
 19 favor of declining to exercise discretion over the state law claims.

20 **A. Any Decision Rendered by This Court Will Not Establish Precedent in the State**
 21 **Courts.**

22 A decision by this circuit will not bind state courts regarding the extent of vested contractual
 23 rights to retirement benefits enjoyed by MEF members. Similarly, this court’s interpretation of
 24 Measure B will not bind California courts, and state courts are free to interpret Measure B or other
 25 similar statutes in a manner that contradicts this court’s interpretation in future cases. Furthermore,
 26 any decision made with respect to the state or *even federal* constitutions or common law doctrines
 27 invoked in this case has no precedential value in the state courts.

28 ///

1 In contrast, state court interpretations of the vested rights doctrine, Measure B, and the state
 2 common law doctrines invoked in discerning vested rights under California and Federal
 3 constitutional law may serve as binding precedent in any future state court litigation. A decision by
 4 the California Supreme Court on the state law issues presented would establish precedent in this
 5 circuit, as would a decision rendered by a state appellate court. Finally, although AFSCME's state
 6 court complaint does not allege any violation of the federal constitution, a decision by the California
 7 Supreme Court on a federal constitutional law issue also will bind state courts in the absence of a
 8 contrary opinion by the United States Supreme Court; the City is free to seek a judgment on those
 9 issues in the state court actions. These considerations strongly favor dismissal on abstention grounds.

10 **a. Vested Rights Analysis**

11 As a preliminary matter, this court must decide to what extent MEF members enjoy a vested
 12 contractual right to retirement benefits and when those rights became vested. Such questions are
 13 answered pursuant to state law, even when raised under the federal constitution (*Orange County*,
 14 *supra*, 610 F.3d at 1102 ("For purposes of Contract Clause analysis, 'federal courts look to state law
 15 to determine the existence of a contract'"), and the Ninth Circuit has previously deferred to the state's
 16 highest court when presented with such issues (*see generally id.*). Of course, AFSCME and its Co-
 17 Defendants have not raised any question under the federal Constitution. (*See* Exhibit 1 to Request for
 18 Judicial Notice filed herewith ("AFSCME Complaint"). Because a Ninth Circuit decision on the
 19 issue will not bind California courts (*see People v. Bradley*, 1 Cal.3d 80, 1 Cal.3d 80, 86 (1969)), it is
 20 best that the state's courts grapple with such novel issues. (*See also Martinez v. Maverick County*
 21 *Water Control and Improvement District*, 219 F.2d 666 (5th Cir. 1955) (affirming district court's
 22 dismissal of class-action suit for declaratory relief and stating, "Every question of law presented is
 23 one of local State law, as to which the decisions of the Texas State Courts would be controlling as
 24 precedents. Hence, the declaratory judgment of the federal court would not be binding as *stare*
 25 *decisis.*")

26 Here, there are currently several state court actions pending which will, in due course, resolve
 27 the questions of law raised by the City. Therefore, the Court has little reason not to abstain from
 28 hearing the City's action and essentially render an advisory opinion.

1 **b. Interpretation of Measure B**

2 It is a futile exercise for a federal court to interpret a state statute before affording that state's
3 courts an opportunity to construct it. A federal court's construction of state or local legislation is not
4 binding on the state courts. Therefore, state courts are still free to interpret the statute differently than
5 their federal counterparts and to reach a contrary conclusion. (*See, e.g., Alabama State Federation of*
6 *Labor v. McAdory*, 325 U.S. 450, 459-460 (1945) ("No state court has decided [questions of statutory
7 interpretation regarding a state statute], briefs and argument offer us little aid in their solution, *and no*
8 *solution which we could tender would be controlling on the state courts.*") (emphasis added)
9 (hereinafter "*McAdory*").)

10 Because federal court opinions regarding state legislation lack this *stare decisis* effect,
11 California courts have interpreted both civil and criminal statutes differently than the Ninth Circuit.
12 (*See, e.g., Schmidlin v. City of Palo Alto*, 157 Cal.App.4th 728, 759-60 (2008) (disagreeing with and
13 declining to follow Ninth Circuit's construction of Gov. Code Sect. 945.3); *People v. Albillar*, 51
14 Cal.4th 47, 66 (2010) (agreeing with Court of Appeal in *People v. Romero, infra*); *People v. Romero*,
15 140 Cal.App.4th 15, 19 (2006) (declining to interpret Pen. Code Sect. 186.22, subd. (b)(1) as did the
16 Ninth Circuit).) Such a situation is highly inefficient, leads to needless repeat litigation, and fails to
17 settle important questions of law. It also may lead to inconsistent results, as suggested by the cases
18 cited above.

19 The Supreme Court has specifically recognized this futility in federal declaratory judgment
20 actions. (*See, e.g., Albertson v. Millard*, 345 U.S. 242 (1953) (hereinafter "*Albertson*"); *McAdory*,
21 *supra*, 325 U.S. at 450.) In *Albertson*, the governor of Michigan had signed into law a statute
22 "requir[ing] the registration of Communists, the Communist Party and Communist front
23 organizations" and "prevent[ing] them from appearing on any ballot in the State." Although the state
24 Legislature had defined the terms "Communist," "Communist Party," and "Communist front
25 organization[.]" the plaintiffs alleged that those terms were unconstitutionally vague and sought a
26 "declaratory judgment to that effect" and an "injunction to prevent state officials and officers from
27 enforcing the Act." (*Id.* at 243.). "A three-judge District Court found the Act constitutional and
28 appeal was taken to th[e Supreme Court]." In reversing and remanding, the Court stated:

1 Interpretation of state legislation is primarily the function of state authorities,
 2 judicial and administrative. *The construction given to a state statute by the state*
 3 *courts is binding upon federal courts.* There has been no interpretation of this
 4 statute by the state courts. The absence of such construction stems from the fact
 5 this action in federal court *was commenced only five days after the statute became*
 6 *law.*¹

7 (*Id.* at 244 (emphasis added).)

8 The Court noted that a concurrent state court action seeking a declaratory judgment that the
 9 statute was unconstitutional on federal and state law grounds was “being held in abeyance pending
 10 [the Court’s mandate] and decision in this case.” (*Millard*, 345 U.S. at 244.) The high Court
 11 “[d]eem[ed] it appropriate ... that the state courts construe[d] th[e] statute before the District Court
 12 further consider[ed] the action.” (*Id.* at 244-45.) Ultimately, the District Court was ordered to remove
 13 its restraint of the pending state court action and hold its own federal action in abeyance while the
 14 state action proceeded. There is no doubt that the proceedings up to the United States Supreme Court
 15 and back down again added significant delay and inefficiency to the resolution of the proper
 16 application of a local law.

17 In this case, the legality of a newly adopted, local statute is in question. While the state
 18 court’s construction of Measure B will bind the courts in this circuit, any construction given to it by
 19 the Ninth Circuit has no *stare decisis* value with the California courts. Where AFSCME has raised
 20 only state law claims, there is no cognizable reason why the case should not proceed in state court,
 21 nor any basis to a contention that the federal district court’s consideration of AFSCME’s case will
 22 lead to greater efficiency. Therefore, the state courts are the necessary venue for this action.

23 **c. Constitutional Interpretation**

24 The California Supreme Court’s interpretation of the state constitution binds the United States
 25 Supreme Court and lower federal courts.² (*Quong Ham Wah Co. v. Industrial Acc. Commission of*
 26 *California*, 255 U.S. 445, 448 (1921).) Furthermore, as is shown in the next section, even a
 27 California Court of Appeal decision on the issue would most likely bind the courts in this circuit.

28 ¹ In this case, the City did not even wait *five days* after Measure B passed before commencing this action. As previously
 noted, it commenced this action even before Measure B passed.

² MEF believes that because of the importance of this issue to California, its chartered entities, and state and public-sector
 employees, the state court actions have a realistic chance of receiving review by the California Supreme Court. However,
 MEF also believes that the chances for review by the United States Supreme Court are slim.

1 However, federal court decisions interpreting the state constitution *do not* bind California courts
 2 (*People v. Bradley*, 1 Cal.3d 80, 1 Cal.3d 80, 86 (1969)), and state courts may interpret provisions of
 3 the state constitution differently than constructions given to parallel federal constitutional provisions
 4 by the United States Supreme Court (*see People v. Disbrow*, 16 Cal.3d 101, 114-15 (1976),
 5 *abrogated on other grounds* (“We pause finally to reaffirm the independent nature of the California
 6 Constitution and our responsibility to separately define and protect the rights of California citizens
 7 despite conflicting decisions of the United States Supreme Court interpreting the federal
 8 Constitution.”)).

9 On the other hand, the decisions of lower federal courts on questions of federal constitutional
 10 law *do not* bind California courts. (*People v. Bradley, supra*, 1 Cal.3d 80, 86 (1969).) Unless the
 11 United States Supreme Court has rendered a decision on the issue, California courts are bound by the
 12 decisions of their own highest court on questions of federal constitutional law. (*People v. Camacho*,
 13 23 Cal.4th 824, 830 fn.1 (2000).) Clearly then, there is no advantage to having these issues decided
 14 first by the federal courts where doing so will not finally settle the issues raised by the City and
 15 defendants in their pending state court actions.

16 **d. The Binding Affect of State Court Decisions on Issues of State Law on Federal**
 17 **Courts**

18 Again, the Ninth Circuit is bound to follow the California Supreme Court’s holdings and dicta
 19 in regards to its interpretations of state law. (*Aceves v. Allstate Ins. Co.*, 68 F.3d 1160, 1164 (9th Cir.
 20 1995) (“The district court, like us, is bound to follow the considered dicta as well as the holdings of
 21 the California Supreme Court when applying California law.”).) In the absence of a decision by the
 22 state’s highest court, federal courts are bound by interpretations of state law pronounced by the
 23 California Court of Appeal “unless it is convinced by other persuasive data that the [California
 24 Supreme Court] would decide otherwise.” (*West v. American Telephone and Telegraph Co.* 311 U.S.
 25 223, 237-38 (1940); *see also In re Watts*, 298 F.3d 1077, 1083 (9th Cir. 2002).) As such, the Ninth
 26 Circuit’s interpretation of state law is only binding on courts in the Ninth Circuit “in the absence of
 27 any subsequent indication from the California courts that [its] interpretation [of state law] was
 28 incorrect.” (*Id.*) Once a state appellate court issues a contrary decision, there is no longer any

1 precedential value to the Ninth Circuit decision.

2 Given the relative novelty of the state law issues at play in this case, a future decision by the
3 California Court of Appeal will likely uproot this court's decision and bind federal courts until the
4 California Supreme Court considers the issues of state law presented. Therefore, a Ninth Circuit
5 decision in this case would be grossly inefficient and constitute a considerable waste of judicial
6 resources.

7 **e. Federal Court Preference for Adjudication by State Courts**

8 At times, federal courts hesitantly render opinions involving important issues of state law
9 when required to; however, that is not the preferred method of adjudicating such claims. A Ninth
10 Circuit justice recently expressed frustration with the California Supreme Court for declining the
11 Ninth Circuit's request for certification in *Orange County Dept. of Educ. v. Calif. Dept. of Educ.*, 668
12 F.3d 1052, 1067 (Bybee, J., dissenting) (hereinafter "*Dept. of Educ.*"), stating:

13 It is more than ironic that, in a case in which there is no discernible federal
14 interest, the California Supreme Court would ignore our invitation to decide a
15 convoluted matter of state law in a dispute between California state agencies. We
16 do not request certification lightly, and it is surprising that California would prefer
that we decide such difficult questions ourselves when we have offered to defer to
its own courts.

17 (*Id.*)

18 In that case, there was no parallel state court proceeding on the issue presented, and the
19 federal court was responsible for adjudicating the matter despite the California Supreme Court's
20 declination to answer the certified question. (*See Dept. of Educ., supra*, 668 F.3d. at 1066 (Bybee, J.,
21 dissenting).) As a result, the decision has no precedential value beyond the affairs of the parties
22 directly involved. However, here, there *are* parallel state court actions in this instance, and this court
23 can avoid the situation that resulted in *Dept. of Educ.* by allowing the state courts to resolve this
24 dispute in the first place. Since "there is no discernible federal interest" in this case, it is best left to
25 the state courts to decide.

26 ///

27 ///

28 ///

B. The Lack of Precedential Value to a Federal Court Decision Favors Abstention.

In contemplating abstention pursuant to *Brillhart v. Excess Insurance Company of America*, 316 U.S. 491 (1942) (hereinafter “*Brillhart*”), federal courts consider whether “the district court should avoid needless determination of state law issues....” (*Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 672 (9th Cir. 2005) (internal citations and quotations omitted).) The fact that a federal court decision in this case would lack precedential value with respect to important and yet-undecided issues of state law weighs heavily in favor of *Brillhart* abstention³. On the other hand, the pending state law actions can resolve this dispute and set precedent with regards to the statutory and constitutional questions presented.

Furthermore, the inability of this circuit to bind California courts also weighs in favor of abstention pursuant to *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 498-502 (1941) (hereinafter “*Pullman*”). The third *Pullman* factor is whether “any federal court construction of the state law might, at any time, be upended by a decision of the state courts.” (*Smelt v. County of Orange*, 447 F.3d 673, 679 (9th Cir. 2006).) With respect to this prong, the Supreme Court has stated:

There is first the *Pullman* concern: that a federal court will be forced to interpret state law without the benefit of state-court consideration and therefore *under circumstances where a constitutional determination is predicated on a reading of the statute that is not binding on state courts and may be discredited at any time—thus essentially rendering the federal-court decision advisory and the litigation underlying it meaningless.*

(*Moore v. Sims*, 442 U.S. 415, 428 (1979) (reversing and remanding case to district court with orders to dismiss) (emphasis added).)

In this case, the state courts have not yet interpreted Measure B or any statute similar to it, and they have not confronted the specific state (or federal) law issues presented. A decision by this court on the state and/or federal law issues presented in this case will not bind the state courts, as they are free to render contrary decisions that would then have a *stare decisis* effect. Therefore, pursuant to

³ The doctrines of *Brillhart* and *Pullman* Abstention, *infra*, are discussed more extensively in the POA and Firefighters’ Motions brought pursuant to Fed. R. Civ. Proc., Rule 12(b). Because MEF joins in those motions, we do not burden the court with repetitive discussion of these doctrines or repeat the arguments made within those briefs.

the aforementioned abstention doctrines, this court should abstain from entertaining plaintiff's challenge and dismiss the suit with prejudice.

C. In the Alternative, This Court Should Decline to Exercise Supplemental Jurisdiction Over Defendants' State Law Claims.

It is MEF's position that this motion should be decided in its favor on the basis of the arguments already advanced in this and Co-Defendants' briefs. Alternatively however, the Court should decline to exercise supplemental jurisdiction over the City's state law claims in the interest of "economy, convenience, fairness and comity." (*Executive Software, supra*, 24 F.3d at 1557-58.)

Supplemental jurisdiction over state law claims is permitted under 28 U.S.C. Section 1367, which gives district courts "supplemental jurisdiction" over all state claims "that are so related to [the federal] claims in the action ... that they form part of the same case or controversy under Article III of the United States Constitution." Most problematic for the City, however, is that AFSCME has posed no federal claims in its state court action, and, consequently, the court has no jurisdiction to "supplement."

Nevertheless, a federal district court may exercise its discretion and decline to exercise supplemental jurisdiction when warranted on a case-by-case basis. (*Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004).) In exercising discretion, a court determines "whether declining supplemental jurisdiction 'comports with the underlying objective of most sensibly accommodat[ing] the values of economy, convenience, fairness and comity.'" (*Ibid* (citation omitted).)

A court may decline jurisdiction over a state law claim if:

- (1) the claims raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(28 U.S.C. § 1367(c).) "[A]ctually exercising discretion and deciding whether to decline, or to retain, supplemental jurisdiction over state law claims when any factor in subdivision (c) is implicated is a responsibility that district courts are duty-bound to take seriously." (*Acri v. Varian Associates*, 114

1 F.3d 999, 1001 (9th Cir. 1997), *en banc*.)

2 Of course if a federal court dismisses a plaintiff's federal claims for lack of subject matter
3 jurisdiction, it may not exercise supplemental jurisdiction over the state law claims and *must* dismiss
4 them as well. (*Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 806 (9th Cir. 2001).)
5 Therefore, if the Court dismisses or stays the federal claims in this case for that reason, it should
6 dismiss the state law claims as well.

7 This court should dismiss the state law claims because they implicate both novel and complex
8 issues. (28 U.S.C. § 1367(c)(1).) Furthermore, the court should dismiss the claims because
9 adjudicating them creates the potential for conflicting interpretations of state law with the state
10 courts. (*See Wilson v. PFS, LLC dba McDonald's # 23315, et al.*, 493 F.Supp.2d 1122, 1126 (S.D.
11 Cal. 2007).)

12 Additionally, AFSCME and its Co-Defendants assert more causes of actions under state than
13 federal law, and this litigation arose because of the act of a subdivision of the state. Therefore, the
14 state law claims are properly dismissed from the City's action because they "substantially
15 predominate over the [federal] claims...." (28 U.S.C. § 1367(c)(2).) Finally, the arguments set forth
16 in the POA and Firefighters' Motions as well as the discussion regarding *stare decisis* in this motion
17 constitute "exceptional circumstances" and "compelling reasons" warranting dismissal pursuant to 28
18 U.S.C. Section 1367(c)(4). (*See United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966)
19 ("Needless decisions of state law should be avoided both as a matter of comity and to promote justice
20 between the parties, by procuring for them a surer-footed reading of applicable law."); *Hays County*
21 *Guardian v. Supple*, 969 F.2d 111, 125 (5th Cir. 1992), *cert. denied*, 506 U.S. 1087 ("[a]djudicating
22 state-law claims in federal court while identical claims are pending in state court would be a pointless
23 waste of judicial resources"), *tacitly approved by Ninth Circuit in Executive Software, supra*, 24 F.3d
24 at 1560 fn.12; *Nicholson v. Lenczewski*, 356 F.Supp.2d 157, 166 (D.Conn. 2005) ("The court should
25 decline to exercise supplemental jurisdiction, however, when state law issues would predominate the
26 litigation or the federal court would be required to interpret state law in the absence of
27 state precedent.") (emphasis added).) Dismissal on such bases would accommodate the values of
28 "economy, convenience, fairness and comity."

1 For the reasons set forth in this motion and that of the POA and Firefighters, this Court should
 2 dismiss the City's state law claims with prejudice, as they are more properly addressed in by the court
 3 of the State of California in the parallel actions currently pending between the parties.

4 IV. CONCLUSION

5
 6 For all these reasons and those set forth in Co-Defendants' motions, this Court should dismiss this
 7 action with prejudice. In the alternative, the City's action should be stayed pending determination of
 8 the questions of state law more properly decided by the courts of California. In any event, the court
 9 should decline to exercise supplemental jurisdiction over Defendants' state-law claims and stay the
 10 federal law claims based on federal abstention principles in favor of the ongoing state court actions.
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 12
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16 Dated: August 3, 2012

BEESON, TAYER & BODINE, APC

17
 18 By: /s/ Vishtasp M. Soroushian
 19 TEAGUE P. PATERSON
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 21 Attorneys for MEF, AFSCME Local 101
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 23
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 25
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 27
 28

EXHIBIT C

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5 Attorneys for Petitioners CHARLES R.
6 "CHUCK" REED; WILLIAM KAMPE;
TOM TAIT; PATRICK MORRIS; and
7 STEPHANIE GOMES, in their capacities as
individual voters and proponents of the
8 subject statewide ballot measure

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**
12 **UNLIMITED JURISDICTION**

13 CHARLES R. "CHUCK" REED;
WILLIAM KAMPE; TOM TAIT;
14 PATRICK MORRIS; and STEPHANIE
GOMES, in their capacities as individual
15 voters and proponents of the subject
statewide ballot measure,

16 Petitioners,

17 v.

18 DEBRA BOWEN, in her capacity as
Secretary of State of California, and
19 KAMALA HARRIS, in her capacity as
Attorney General of California; and DOES
20 1 through 10,

21 Respondents.
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27
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Case No.

**VERIFIED PETITION FOR WRIT
OF MANDATE**

**[Election Matter, California Elections
Code section 13314]**

**Priority Matter pursuant to California
Elections Code section 13314(a)(3)**

1 duty by any elections official.

2 5. Respondent ATTORNEY GENERAL is required by law to prepare a true
3 and impartial circulating title and summary of the chief purposes and points of the
4 proposed measure which is neither argumentative, nor likely to create prejudice for or
5 against any measure presented to the voters by initiative. (EC sections 9004(a), 9051 &
6 9092.)

7 6. Respondent ATTORNEY GENERAL has failed to prepare a circulating
8 title and summary that complies with the provisions of the EC.

9 7. Petitioners contend that the circulating title and summary uses false and
10 misleading words and phrases which advocate for the measure's defeat, is argumentative,
11 and creates prejudice against the measure, rather than merely informing voters of its chief
12 purposes and points, in violation of the EC.

13 8. This Court must correct or amend the circulating title and summary to
14 ensure that it complies with the EC and to ensure that voters are not misled.

15 **PRIORITY MATTER**

16 9. Pursuant to EC section 13314(a)(3), as an election law writ petition, this
17 matter "shall have priority over all other civil matters."

18 **JURISDICTION, VENUE & TIMELINESS**

19 10. This Court has jurisdiction over this matter because the subject of the
20 proceeding is a statewide measure seeking to be placed on the ballot. (EC section
21 13314(b)(3) [Sacramento County is exclusive venue for such actions].) This action is
22 timely filed, because the proponents only recently learned of the circulating title and
23 summary and its legal deficiencies, must print the circulating title and summary on the
24 initiative petition before gathering signatures to attempt to qualify the measure for the
25 ballot (EC sections 9008 & 9009), and have only 150 days to do so (EC section 9014).

26 **PARTIES**

27 11. Petitioners CHARLES REED, WILLIAM KAMPE, TOM TAIT,
28

1 PATRICK MORRIS and STEPHANIE GOMES are, and at all times relevant herein
2 were, the official proponents of the measure, as well as being residents, taxpayers and
3 registered voters in the State of California, and are authorized by EC section 13314 to
4 bring this action. Each of the Petitioners bring this Petition in their individual capacities
5 as private citizens of the State and proponents of the measure.

6 12. Respondent SECRETARY OF STATE is the Secretary of State of
7 California and is the state's chief elections officer. EC section 13314(a)(4) requires that
8 the Secretary of State be named as a Respondent or Real Party in Interest in this action.

9 13. Respondent ATTORNEY GENERAL is the author of the circulating title
10 and summary and is charged with the statutory duty to prepare a fair and impartial
11 circulating title and summary for initiative measures that have yet to be qualified for the
12 ballot.

13 14. Respondents DOES 1 through 10 were, at all times relevant hereto, agents
14 of the other Respondents and, like Respondent ATTORNEY GENERAL, committed
15 errors, omissions, and/or neglects of duty in connection with the circulating title and
16 summary. Petitioners are unaware of the identities of the DOE Respondents and will
17 include them by name in this litigation when their identities and roles are ascertained.

18 **RELEVANT FACTS AND LAW**

19 15. The circulating title and summary issued by the ATTORNEY GENERAL
20 on January 6, 2014 reads as follows (see Exh. B):

21 **"PUBLIC EMPLOYEES. PENSION AND RETIREE HEALTHCARE**
22 **BENEFITS. INITIATIVE CONSTITUTIONAL AMENDMENT.** Eliminates
23 constitutional protections for vested pension and retiree healthcare benefits for current
24 public employees, including teachers, nurses, and peace officers, for future work
25 performed. Permits government employers to reduce employee benefits and increase
26 employee contributions for future work if retirement plans are substantially underfunded
27 or government employer declares a fiscal emergency. Requires government employers
28

1 whose pension or retiree healthcare plans are less than 80 percent funded to prepare a
2 stabilization report specifying non-binding actions designed to achieve 100 percent
3 funding within 15 years. Summary of estimate by Legislative Analyst and Director of
4 Finance of fiscal impact on state and local government: Potential net reduction of
5 hundreds of millions of dollars per year in state and local government costs. Net savings
6 – emerging over time – would depend on how much governments reduce retirement
7 benefits and increase salary and other benefits. Increased annual costs – potentially in the
8 hundreds of millions to billions of dollars – over the next two decades for those state and
9 local governments choosing to increase contributions for unfunded liabilities, more than
10 offset by retirement cost savings in future decades. Increased annual costs to state and
11 local governments to develop retirement system funding reports and to modify procedures
12 and information technology. Costs could exceed tens of millions of dollars initially, but
13 would decline in future years.”

14 16. EC section 9051 requires the title and summary to be a “true and impartial
15 statement of the purpose of the measure in such language that . . . shall neither be an
16 argument, nor be likely to create prejudice for or against the proposed measure.”

17 17. Prior to the issuance of the circulating title and summary and at the behest
18 of the office of the ATTORNEY GENERAL, the proponents submitted a suggested
19 circulating title and summary. (A true and correct copy of that submission is attached
20 hereto as Exhibit C and incorporated herein by this reference.) The proponents also
21 submitted a letter to the office of the ATTORNEY GENERAL explaining that the
22 measure does not impact vested benefits. (A true and correct copy of that letter is
23 attached hereto as Exhibit D and incorporated herein by this reference.)

24 18. EC section 13314(a) provides that this Court may issue a writ of mandate to
25 compel the ATTORNEY GENERAL and the Attorney General’s office to fulfill their
26 duties under EC sections 9004(a), 9051 and 9092 to prepare a circulating title and
27 summary that is not false, misleading, partial or argumentative.
28

19. EC section 13314(a)(2) authorizes this Court to issue a peremptory writ of mandate “upon proof . . . that an error, omission, or neglect” violates the EC or the California Constitution, and “that issuance of the writ will not substantially interfere with the conduct of the election.”

20. Several words and phrases in the circulating title and summary for the measure do not comply with the EC and are false, misleading, partial and/or argumentative, as those terms are used in EC sections 9004(a), 9051 and 9092, including, but not limited to, the following:

(1) The phrase “eliminates constitutional protections for vested pension and retiree healthcare benefits . . .” is false, misleading, partial and/or argumentative because the measure does not eliminate protections for benefits for future work performed. The measure protects retirement benefits for current public employees as work is performed, while allowing changes in benefits through bargaining, or by voters, for future work.

(2) The phrase “. . . public employees, including teachers, nurses, and peace officers” is biased, argumentative, likely to create prejudice, and/or partial because it unnecessarily highlights popular and sympathetic categories of public employees. The Attorney General’s office has no rational basis for including only these three categories of government employees, while excluding other categories, in the summary, and in any event, has no reason to further explain the term “public employees.”

21. Petitioners are beneficially interested in this matter, have no plain, speedy, or adequate remedy at law, and will suffer immediate and irreparable injury unless this Court issues a writ of mandate deleting or amending the false and/or misleading statements as described herein.

FIRST CAUSE OF ACTION

(Writ of Mandate Re: Circulating Title and Summary)

22. Petitioners reallege, and incorporate herein by this reference as if fully set forth herein, the allegations of paragraphs 1 through 21, inclusive.

23. The ATTORNEY GENERAL's circulating title and summary for the measure is not fair and impartial, and is false, misleading, partial and/or argumentative, and therefore violates the EC.

24. The Court should delete the words and phrases “eliminates,” “vested” and “including teachers, nurses, and peace officers” from the first sentence of the summary, and should make other amendments and corrections to this sentence, in order to ensure the neutrality and integrity of the election process and in order to ensure that the voters are properly informed of the measure’s chief purposes and points, as required by law.

25. Issuing a writ in this case will not interfere with the conduct of any election, because the measure has not yet qualified for any ballot.

PRAYER

WHEREFORE, Petitioners pray that this Court:

1. Issue an alternative writ of mandate compelling Respondent ATTORNEY GENERAL to amend the circulating title and summary for the measure;
2. Award Petitioners attorneys' fees and costs incurred in connection with this matter; and
3. Grant such other and further relief as may be just and proper.

Dated: February 5, 2014

By:

Bradley W. Hertz
Jonathan S. Mintzer
The Sutton Law Firm, PC
Attorneys for Petitioners CHARLES R.
"CHUCK" REED, WILLIAM KAMPE, TOM
TAIT, PATRICK MORRIS and STEPHANIE
GOMES

November 8, 2013

RECEIVED

NOV 12 2013

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Ms. Ashley Johansson
Initiative Coordinator
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

Re: Request for Title and Summary for Re-submitted Proposed Initiative

Dear Ms. Johansson:

Pursuant to Article II, Section 10(d) of the California Constitution, this letter respectfully requests that the Attorney General prepare a circulating title and summary of the enclosed proposed statewide initiative: "The Pension Reform Act of 2014." The proposed initiative is substantially the same as the identically-titled initiative which we submitted to your office on October 15, 2013, though the proposed initiative includes several substantive amendments. For your convenience, we have included a clean version of the proposed initiative, as well as a version identifying the changes that we have made to the prior version of the initiative. Also enclosed are the required signed statements pursuant to California Elections Code sections 9001 and 9608, and a check in the amount of \$200.

Please direct all queries and correspondence regarding this proposed initiative to:

James R. Sutton, Esq.
Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108
415/732-7700
jsutton@campaignlawyers.com

Thank you for your time and attention to this matter.

Sincerely,


Proponent - Chuck Reed

11/7/13
Date

cc: James R. Sutton, Esq.
Enclosures

EXHIBIT A

Ms. Ashley Johansson

Request for Title and Summary for Re-submitted Proposed Initiative
The Pension Reform Act of 2014

November 8, 2013

William R Kampe

Proponent – William R. Kampe

Nov 7, 2013

Date

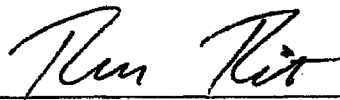
EXHIBIT A

Ms. Ashley Johansson

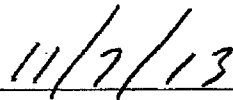
Request for Title and Summary for Re-submitted Proposed Initiative

The Pension Reform Act of 2014

November 8, 2013



Proponent – Tom Tait



Date

EXHIBIT A

Ms. Ashley Johansson

Request for Title and Summary for Re-submitted Proposed Initiative

The Pension Reform Act of 2014

November 8, 2013


Proponent – Patrick J. Morris

11/8/13
Date

EXHIBIT A

Ms. Ashley Johansson
Request for Title and Summary for Re-submitted Proposed Initiative
The Pension Reform Act of 2014
November 8, 2013



Proponent – Stephanie Gomes

11/8/13
Date

EXHIBIT A

THE PENSION REFORM ACT OF 2014

SECTION 1. TITLE.

This measure shall be known and may be cited as "The Pension Reform Act of 2014."

SECTION 2. FINDINGS.

(a) Government has a responsibility to provide essential services that protect the safety, health, welfare, and quality of life enjoyed by all Californians. Government also has an obligation to be fair to its employees and ensure that its retirement benefit plans are sustainable, fiscally sound, and able to meet the commitments made to its employees and retirees.

(b) The cost of California's current government employee retirement benefits is threatening the government's ability to achieve these goals. California's government reform agency, the Little Hoover Commission, issued a report in February 2011 entitled "Public Pensions for Retirement Security." The report stated, "*California's pension plans are dangerously underfunded, the result of overly generous benefit promises, wishful thinking and an unwillingness to plan prudently.*" The Commission concluded that pension costs are impairing the government's ability to provide essential services, and without aggressive reforms, cities and counties will be forced to slash services, reduce other forms of compensation, and lay off more government employees. In fact, government employee retirement benefits have been a primary factor behind the recent bankruptcies of the cities of Vallejo, Stockton, and San Bernardino, and threaten dozens of other jurisdictions with service-level insolvency. And if these problems continue to grow and become more widespread, government employees will be in peril of not receiving the retirement benefits they have earned.

(c) The current situation was not foreseen when the State Legislature passed Senate Bill 400, which granted retroactive pension increases to state employees in 1999. Back then, the California Public Employees Retirement System ("CalPERS"), the state's largest pension plan, estimated that state pension costs would not increase for a decade. Instead, according to CalPERS, the cumulative increase in state pension costs topped \$16 billion during that decade. In addition, the Stanford Institute for Economic Policy Research has estimated that unfunded state and local pension liabilities now exceed \$500 billion. These dramatic cost increases and unfunded liabilities are not simply due to the recession or drops in the housing and stock market several years ago, but are also attributable to inherent and systemic flaws in the government employee retirement benefits system. In a report issued in April 2013, CalPERS projected that retirement

contributions will rise by up to an additional 50 percent during the next seven years, creating a burden that will prove unbearable for many cities, counties, and other local government agencies. The situation at the California State Teachers' Retirement System ("CalSTRS") is much worse. In September 2013, CalSTRS reported that, under currently accepted Governmental Accounting Standards Board standards, its pension plan was only 44.7 percent funded.

(d) This voter-sponsored measure is necessary because attempts to reform the system through legislation and other initiatives have been inadequate. Even though the Little Hoover Commission has confirmed that California cannot solve its pension problems without making prospective changes going forward for current employees, the pension reforms passed by the Legislature in 2012 did not include such necessary changes. In addition, more substantial pension reforms adopted by local governments are at-risk of being overturned by the courts due to a lack of clarity in the law. While private sector pension plans are governed by federal laws that allow the plan sponsors to prospectively change employee benefits and provide for specific remedies when the plans become financially distressed, some argue that the language in some California judicial decisions hold that the same standard does not apply to public pensions. Finally, the citizens of California strongly support pension reform and believe the 2012 state legislation did not fix the problem.

(e) This measure is fair and reasonable, serves an important public purpose, restores the integrity and stability of government pension systems, and is necessary to preserve and protect the safety, health, and welfare of the people of California, for the following reasons:

(1) This measure allows government employers and voters to modify pension and retiree healthcare benefits and to increase employee contributions in future collective bargaining agreements for future years of service, while protecting benefits previously earned.

(2) Under federal law for private sector pension funds, pension plans are allowed to modify benefits for future years of service and are required to develop a plan for corrective action when they are underfunded. This measure would apply similar standards to government employee pension and retiree healthcare plans, allowing financially distressed government employers to make necessary modifications and requiring agencies administering the plans to implement such modifications.

(3) This measure provides long-term stability to retirement benefit programs by providing comprehensive standards that permit government employers to make and implement necessary modifications to pension and retiree

healthcare plans that will provide fiscal sustainability for the government employer, require implementation of such modifications by agencies administering such plans, and give the courts clear direction on how to adjudicate such important public policy goals.

(f) Therefore, to enable the people of California to meet the goals outlined above, to prevent them from being encumbered with additional unsustainable burdens, and to protect government employees and retirees, this measure amends the Constitution of the State of California.

SECTION 3. PURPOSE AND INTENT.

The People hereby enact this measure:

(a) To amend the Constitution of the State of California to enable the people of California to take those actions necessary to attain fiscal sustainability and provide fiscally responsible and adequately funded pension and retiree healthcare benefits for all government employees and retirees.

(b) To create an explicit constitutional amendment to Article 1, Section 9 of the California Constitution.

(c) To prevail and control over any conflicting provisions in the California Constitution, California Government Code or other provision of California law.

(d) To supersede the portions of the California Supreme Court decisions in *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, *Miller v. California* (1977) 18 Cal.3d 808, and their progeny which have been construed as limiting the ability to prospectively modify pension and retiree healthcare benefits for work not yet performed by government employees.

(e) To authorize state and local governments to exercise their authority, including the exercise of their inherent police powers, to provide and protect essential government services, consistent with the United States Constitution.

(f) To provide clear and reasonable guidelines to all California courts, government employers, and retirement plan administrators to address these serious pension and retiree healthcare benefit cost and underfunding problems in a manner consistent with the United States Constitution's contract, takings, equal protection, and due process provisions.

(g) To protect pension and retiree healthcare benefits based on work already performed, while allowing reasonable modifications to such benefits for future services.

SECTION 4. AMENDMENTS TO CALIFORNIA CONSTITUTION

Section 9 of Article I of the California Constitution is amended to read:

A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed. *Section 12 of Article VII of the Constitution is deemed not to impair the obligation of contracts.*

Section 12 is added to Article VII of the California Constitution, to read:

Public Employee Retirement Benefits and Obligations

SEC. 12(a)(1) From the effective date of this Section, to the extent any government employer confers its current employees with vested contractual rights to pension or retiree healthcare benefits of any kind, such rights shall be earned and vested incrementally, only as the recipient employee actually performs work, and only in proportion to the work performed, subject to the vesting periods established by the applicable plan.

(2) Nothing in this subsection shall affect pension or retiree healthcare benefits earned and accrued for work already performed by employees or retirees.

(b) For any government employee hired after the effective date of this Section, to the extent any government employer confers these employees with vested contractual rights to pension or retiree healthcare benefits of any kind, such rights shall be earned and vested incrementally, only as the employee actually performs work, and only in proportion to the work performed, subject to the vesting periods established by the applicable plan.

(c) Any action by a government employer, labor agreement or voter initiative prior to the effective date of this Section shall not be found to have created a vested contractual right to future pension or retiree healthcare benefits before such work is performed by employees, unless the specific language of the underlying action, agreement or initiative expressly states that such benefits are vested or are otherwise irrevocable.

(d) Nothing in this Section shall be construed as conferring or vesting any rights or benefits on government employees not expressly granted by the government employer.

(e) The terms of a pension or retiree healthcare benefit plan for work not yet performed may be amended through a labor agreement, an action by a legislative body, or an initiative, referendum or other ballot measure initiated by the voters or by a legislative body. Any such amendments to pension or retiree healthcare benefits made by a legislative body, whether by legislation or by placing a measure on the ballot, shall comply with applicable collective bargaining laws.

(f) Courts shall have exclusive jurisdiction to consider and adjudicate all disputes regarding laws relating to pension or retiree healthcare benefits enacted or proposed through an initiative, referendum or other ballot measure.

(g)(1) Nothing in this Section shall alter any provisions of a labor agreement in effect as of the effective date of this Act, but this Section shall apply to any successor labor agreement, renewal or extension entered into after the effective date of this Act.

(2) Any provision of a labor agreement executed within 12 months before the effective date of this Act which is inconsistent with any provision of this Act shall be invalid if a court determines by a preponderance of evidence that such provision of the labor agreement was entered into for the purpose of avoiding this Act.

(3) For the purposes of this subsection, there shall be a rebuttable presumption that any labor agreement renewed or extended more than 6 months before its expiration date during the 12-month period before the effective date of this Act was entered into for the purpose of avoiding this Act.

(h) The amount employees are required to pay for pension or retiree healthcare benefits is a component of an employee's compensation package, and may be amended through a labor agreement, an action by a legislative body, or an initiative, referendum or other ballot measure initiated by the voters or by a legislative body.

(i)(1) If a government employer finds its pension or retiree healthcare plan is substantially underfunded and is at risk of not having sufficient funds to pay benefits to retirees or future retirees, or declares a fiscal emergency because the financial condition of the government employer impairs its ability to provide essential government services or to protect the vital interests of the community, the government employer, in addition to its current powers and the powers set out in this Section, shall have the authority to implement one or more of the following actions for all employees, within the limits of the United States Constitution:

(i) Reduce the rate of accrual for pension or retiree healthcare benefits to be earned in the future.

(ii) Reduce the rate of cost of living adjustments for pension or retiree healthcare benefits to be made in the future.

(iii) Increase the retirement age for payment of pension or retiree healthcare benefits to be earned in the future.

(iv) Require employees to pay a larger share of the cost of pension or retiree healthcare benefits.

(v) Other reductions or modifications of pension or retiree healthcare benefits agreed upon during collective bargaining.

(2) The government employer shall make factual findings establishing that such actions are reasonable and necessary to serve an important public purpose and are consistent with the United States Constitution and the California Constitution, as modified by this Act.

(3) If a government employer takes any of the actions described in this subsection, such actions shall apply only to work performed by employees after the date on which the government employer takes such actions.

(4) If such actions are within the mandatory scope of collective bargaining, they shall be submitted to collective bargaining.

(5) Any such actions may be subsequently amended to take into account changes in circumstances, subject to the process established in this Section.

(j)(1) For any pension or retiree healthcare plan with assets equaling less than 80 percent of the plan's liabilities, as calculated by the plan's actuary using generally accepted accounting principles, the government employer shall prepare a stabilization report.

(2) The stabilization report shall specify actions designed to achieve 100 percent funding of the plan within 15 years while preserving basic government services. The stabilization report shall identify (i) the benefits to be modified, if any, (ii) the additional costs to be incurred by employees, if any, (iii) the additional costs to be incurred by the government employer, if any, (iv) the specific funding sources to be used to pay for such additional costs, (v) the investment return rates needed to be achieved to obtain such funding level, as well as information regarding the historical rates of return earned by the applicable plan, and (vi) the impact of any

existing pension obligation bonds issued by the government employer, and any additional actions that may be needed to pay off such bonds.

(3) The stabilization report shall be published for public review within 180 days of receiving an actuarial valuation from the retirement plan administrator on the funding status of the pension or retiree healthcare plan.

(4) The government employer shall hold a public hearing to receive public input and formally accept the stabilization report within 270 days of receiving an actuarial valuation from the retirement plan administrator on the funding status of the plan. Nothing in this subsection shall require the government employer to adopt or implement any actions specified in the stabilization report.

(5) Each year thereafter the government employer shall follow the process established in this Section until the pension or retiree healthcare plan's actuary reports that the pension or retiree healthcare plan is at least 100 percent funded.

(k) When a government employer modifies, freezes or terminates a pension or retiree healthcare plan, the government employer's obligation to ensure payment for all employee benefits accrued prior to the date of such action shall continue. For such modified, frozen or terminated plans, the retirement plan administrator shall use the same discount rate applied to the plan administrator's unmodified plans when establishing contribution rates and shall not impose a penalty or premium on such plans. The government employer and employees shall maintain responsibility for all unfunded liabilities in such plans in accordance with the terms of the labor agreement between the government employer and employees, and shall make amortization payments using the same methodologies that govern the retirement plan administrator's other plans. This provision shall not apply to the obligations of government employers which are dissolving.

(l) The power to amend the terms of a pension or retiree healthcare benefit plan as allowed under this Section may not be prohibited or limited by labor agreement, statute, resolution, ordinance, or any other act by an executive, legislative body, pension board, or any other governmental entity.

(m) Every government employer and pension board shall promptly implement and enforce all provisions of this Act unless ordered otherwise by a court.

(n) Should it be determined that any provision of this Act is in conflict with any other provision of the California Constitution, the California Government Code or any other provision of California law, the provisions of this Act shall prevail and control.

(o) As used in this Section, the following definitions shall apply:

(1) "Act" shall mean the Pension Reform Act of 2014.

(2) "Government employee" and "employee" shall mean an employee, officer or elected official of a government employer who is entitled to receive pension or retiree healthcare benefits.

(3) "Government employer" and "employer" shall mean the state or a political subdivision of the state, including but not limited to counties, cities, charter counties, charter cities, charter city and counties, school districts, special districts, boards, commissions, the Regents of the University of California, California State University, and agencies thereof. For the purposes of this section, the Legislature shall serve as the government employer with respect to the pension benefits of the members of the California State Teachers Retirement System, but not with respect to their retiree healthcare benefits.

(4) "Labor agreement" shall mean a memorandum of understanding, collective bargaining agreement, contract or similar agreement entered into between a government employer and a recognized employee organization representing government employees.

(5) "Pension" or "pension benefits" shall mean a plan or trust providing a defined benefit determined by a formula based on factors such as age, years of service and compensation, or a defined contribution plan. It shall not include disability benefits for government employees or death benefits for families of government employees, even if those benefits are provided as part of a pension or deferred compensation plan.

(6) "Pension board" shall mean a retirement board as defined in section 17(h) of Article XVI.

(7) "Plan" and "retirement plan" shall mean any pension or retirement plan offered by a government employer for the purpose of providing retirement benefits to government employees.

(8) "Retiree healthcare" or "retiree healthcare benefits" shall mean a plan or trust providing healthcare benefits to retired government employees, such as healthcare services (including acute and chronic care), payment of capitation fees (including those for the United States Medicare Program), other medical services, and dental and vision services. It shall not include disability benefits for government employees or death benefits for families of government employees even if those benefits are provided as part of a healthcare plan.

SECTION 5. Effective Date.

Except as otherwise provided herein, this Act shall become effective the day after its approval by the voters, pursuant to section 10(a) of Article II of the California Constitution.

SECTION 6. Conflicting Measures.

This Act is intended to be comprehensive. It is the intent of the People that in the event this Act and one or more measures relating to the same subject shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this Act. In the event that this Act receives a greater number of affirmative votes, the provisions of this Act shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

SECTION 7. Liberal Construction.

This Act is an exercise of the public power of the people of the State of California for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate its purposes.

SECTION 8. Severability.

If any provision of this Act, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this Act are severable. The voters hereby declare that this Act, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional.

SECTION 9. Defending the Pension Reform Act of 2014.

(a) The people of the State of California declare that the proponents of this Act have a direct and personal stake in defending this Act and grant formal authority to the proponents to defend this Act in any legal proceeding, either by intervening in such legal proceeding, or by defending the Act on behalf of the people and the State in the event that the State declines to defend the Act or declines to appeal an adverse judgment against the Act.

(b) In the event that the proponents are defending this Act in a legal proceeding because the State has declined to defend it or to appeal an adverse judgment against it, the proponents shall:

(1) act as agents of the people and the State;

(2) be subject to all ethical, legal, and fiduciary duties applicable to such parties in such legal proceeding; and

(3) take and be subject to the Oath of Office prescribed by Article XX, section 3 of the California Constitution for the limited purpose of acting on behalf of the people and the State in such legal proceeding.

January 6, 2014
Initiative 13-0043

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

PUBLIC EMPLOYEES. PENSION AND RETIREE HEALTHCARE BENEFITS.

INITIATIVE CONSTITUTIONAL AMENDMENT. Eliminates constitutional protections for vested pension and retiree healthcare benefits for current public employees, including teachers, nurses, and peace officers, for future work performed. Permits government employers to reduce employee benefits and increase employee contributions for future work if retirement plans are substantially underfunded or government employer declares fiscal emergency. Requires government employers whose pension or retiree healthcare plans are less than 80 percent funded to prepare a stabilization report specifying non-binding actions designed to achieve 100 percent funding within 15 years. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Potential net reduction of hundreds of millions to billions of dollars per year in state and local government costs. Net savings—emerging over time—would depend on how much governments reduce retirement benefits and increase salary and other benefits. Increased annual costs—potentially in the hundreds of millions to billions of dollars—over the next two decades for those state and local governments choosing to increase contributions for unfunded liabilities, more than offset by retirement cost savings in future decades. Increased annual costs to state and local governments to develop retirement system funding reports and to modify procedures and information technology. Costs could exceed tens of millions of dollars initially, but would decline in future years.** (13-0043.)

THE PENSION REFORM ACT OF 2014

Suggested Title and Summary (100 words)

PUBLIC EMPLOYEES RETIREMENT BENEFITS SYSTEM REFORM. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Amends California Constitution to allow state and local governments to prospectively amend public employee retirement benefits for employees' future years of service.
- Gives voters power to prospectively amend public employee retirement benefits through initiative process.
- Requires changes be made pursuant to applicable collective bargaining laws.
- Prohibits reduction in public employee retirement benefits accrued for work already performed.
- Requires public employee retirement plans that are less than 80% funded to prepare public report detailing level of underfunding and potential actions that would achieve full-funding within 15 years.
- Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Unknown fiscal impact. Potentially major decrease in state and local spending depending on future actions of the Legislature, local governing boards, and voters.

Prepared 10/25/13

EXHIBIT C

Reform Pensions 2014

The Honorable Kamala D. Harris
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

October 9, 2013

Attorney General Harris:

We are writing in support of the Pension Reform Act of 2014 that has been submitted to your office for preparation of title and summary. We respectfully request that you give it prompt attention and consideration.

As Mayors of California cities, we have seen firsthand how the rising cost of public employee retirement benefits has forced cities, counties and other government agencies to cut public services, layoff hard-working employees and defer badly-needed improvements to critical infrastructure. These costs have helped drive some cities into bankruptcy and have pushed even more towards service level insolvency. We are also deeply concerned that huge unfunded liabilities in our state's pension funds will jeopardize cities' ability to pay out the benefits that our employees and retirees will be counting on in retirement. Yet, as elected leaders, we do not have the tools we need to address this massive problem.

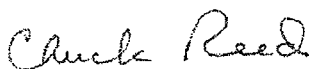
This measure will provide cities, counties and other government agencies with the tools to protect important government services, increase the retirement security of our dedicated public servants, and avoid service level insolvency (or even worse, bankruptcy).

Specifically, the measure will allow government agencies to prospectively modify retirement benefit earnings for future years of service, while protecting the retirement benefits employees have earned to-date. Nothing in this measure will retroactively change any benefits that employees have accrued for work that has been performed.

It is also important to note that this measure does not prescribe a one-size-fits-all solution for all government agencies in the state, nor does it mandate that a government agency modify its retirement benefits. Instead, it provides each government agency with the flexibility to craft a solution that is appropriate for its particular circumstances.

We welcome you to contact us at any time should you have any questions or need additional information about the critical needs for this proposed ballot measure.

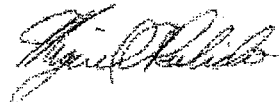
Sincerely,



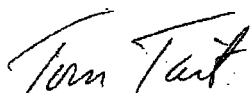
Chuck Reed
Mayor of San Jose



Pat Morris
Mayor of San Bernardino



Miguel Pulido
Mayor of Santa Ana



Tom Tait
Mayor of Anaheim



Bill Kampe
Mayor of Pacific Grove

EXHIBIT D

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VERIFICATION

I, CHARLES REED, declare that I am one of the individual Petitioners in this matter.

I am a registered voter in the State of California and an official proponent of the proposed statewide ballot measure called "The Pension Reform Act of 2014."

I have read the foregoing **Verified Petition for Writ of Mandate** regarding the circulating title and summary of the proposed statewide ballot measure known as "The Pension Reform Act of 2014" prepared by the Attorney General's office, and know the contents thereof. The same is true of my own knowledge, except as to those matters that are herein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 4, 2014 in San Jose, California.

By: Charles R Reed
Charles Reed CHUCK REED
Petitioner

EXHIBIT D

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Gonzalo C. Martinez, No. 231724
Amber L. West, No. 245002

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Local 101

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Attorneys for Plaintiff San Jose Retired
Employees' Association

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSE, BOARD OF
ADMINISTRATION FOR POLICE
AND FIRE DEPARTMENT

FILED

JUL 29 2013

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY *[Signature]* DEPUTY
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UCS

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Attorneys for Necessary Party in Interest
Board of Administration of the Federated City
Employees' Retirement System

No. 1-12-CV-225926
(and Consolidated Actions
1-12-CV-225928, 1-12-CV-226570,
1-12-CV-226574, 1-12-CV-227864,
and 1-12-CV-233660)

**STIPULATION AND [PROPOSED] ORDER
REGARDING EXHIBITS OF DEFENDANT
CITY OF SAN JOSE, PLAINTIFFS SJPOA,**

1 RETIREMENT PLAN OF CITY OF
2 SAN JOSE, and DOES 1-10, inclusive,
3 Defendants.

AND AFSCME LOCAL 101

Complaint Filed: June 16, 2012
Trial: July 22, 2013

4
5 AND RELATED CROSS-COMPLAINT
6 AND CONSOLIDATED ACTIONS

7
8 All parties in this action, acting by and through their counsel of record, hereby
9 agree and stipulate as follows:

10 WHEREAS, the parties have continued to pursue the shared goal of
11 elimination of excessive time spent at trial on authentication and admission of exhibits;

12 WHEREAS, Plaintiffs and Defendant City of San Jose have met extensively in
13 an attempt to form as many stipulations as possible as to the trial exhibits;

14 WHEREAS, the parties have agreed to stipulate to authenticity of certain trial
15 exhibits;

16 WHEREAS, the parties have agreed to stipulate to admissibility of certain trial
17 exhibits;

18 WHEREAS, all parties are signatories to this agreement;

19 THE PARTIES HEREBY STIPULATE to the following:

20
21 **CITY OF SAN JOSE EXHIBITS**

Measure B [5000 series]				
Ex. No	Date	Description	ID	EV
5000	February 8, 2012	Full Text of Measure B: Article XV-A Retirement: Public Employee Pension Plan Amendments – To Ensure Fair and Sustainable Retirement Benefits While Preserving Essential City Services. [SJRJN000095 – 000111]		Admit
5001	N/A	Ballot Pamphlet – Measure B. [SJ001410 – 001412]		Admit

History of Measure B [5100 series]				
Ex. No	Date	Description	ID	EV
5100	November 2008	City of San Jose General Fund Structural Deficit Elimination Plan. [SJ001413 – 001509]		Admit
5101	September 2010	City Auditor's Report, "Pension Sustainability: Rising Pension Costs Threaten the City's Ability to Maintain Service Levels – Alternatives for a Sustainable Future." [GURZA000001 – 000080]		Admitted previously
5102	September 2010	Exhibit presentation to Pension Sustainability: Rising Pension Costs Threaten the City's Ability to Maintain Service Levels – Alternatives for a Sustainable Future. [SJ001510 – 001534]		Admitted previously
5103	April 2011	City of San Jose Report to City Council: "Disability Retirement: A Program in Need of Reform." [SJ001535 – 001576]		Admitted previously
5104	May 2, 2011	Figone memorandum regarding City of San Jose Fiscal Reform Plan. [SJ001577 – 001641]		Admit
5105	March 6, 2012	City of San Jose Resolution No. 76158, "A Resolution of the Council of the City of San Jose Repealing Resolution No. 76087 and Calling and Giving Notice of, on its Own Motion, the Submission to the Electors of the City of San Jose, at a Special Municipal Election to be Held on June 5, 2012, a Ballot Measure Proposal to Amend the San Jose City Charter to Add a New Article XV-A to Reform City Pensions and Benefits Provided to Current Employees and Establish Reduced Pensions and Benefits for New Employees and to Place Other Limitations on Pensions and Benefits." [SJRJN000090 – 000094]		Admit
5106	September 7, 2012	Memorandum from Debra Figone to Mayor and City Council re: Background on Compensation Reductions. [SJ001642 – 001647]	Auth	
5107	March 26, 2013	"Stipulation and Order re: Implementation of Measure B in Connection with Trial Set for June 17,		Admit

History of Measure B [5100 series]				
Ex. No	Date	Description	ID	EV
		2013.” [SJRJN000605-000609]		
5108	May 1, 2013	2013-2014 City Manager’s Operating Budget Message. [SJ001648 – 001677]		Admit
5109	February 2013	2013-2014 City Manager’s Budget Request & 2014-2018 Five-Year Forecast and Revenue Projections. [SJ003276 – 003332]		Admit
5110	February 14, 2011	Video clip from annual Budget Priority Setting Study Session.		Admit
5111	February 9, 2012	Memorandum from Debra Figone to Mayor and City Council regarding Retirement Projections Fact Sheet. [SJ003728-003746]		Admit
5112	March 22, 2012	Memorandum from Debra Figone to Mayor and City Council regarding Retirement Cost Projections. [SJ003747-003750]	Auth	
5113	N/A	Budget Balancing: Service Reductions/Eliminations presentation – pg. 9. [SJ003846]	Auth	
5114	N/A	Budget Balancing: Service Reductions/Eliminations presentation – pg. 10. [SJ003847]	Auth	
5115	N/A	Budget Balancing: Service Reductions/Eliminations presentation – pg. 11. [SJ003848]	Auth	
5116	N/A	Budget Balancing: Service Reductions/Eliminations presentation – pg. 12. [SJ003849]	Auth	
5117	November 10, 2010	Memorandum from Debra Figone to Mayor re: Recommendations on Labor Negotiations Direction. [SJ003765 – 003775]	Auth	
5118	March 12, 2010	Memorandum from Mayor Chuck Reed to City of San Jose City Council re: March Budget Message for Fiscal Year 2010-2011. [SJ003776 – 003802]	Auth	
5119	March 11, 2011	Memorandum from Mayor Chuck Reed to City of San Jose City Council re: March Budget Message for Fiscal Year 2011-	Auth	

History of Measure B [5100 series]				
Ex. No	Date	Description	ID	EV
		2012. [SJ003818 – 003838]		

City Charter [5200 series]				
Ex. No	Date	Description	ID	EV
5200	1915	The City of San Jose 1915 City Charter Amendment. [SJ001678 -001722]		Admit
5201	1925	The City of San Jose 1925 City Charter Amendment. [SJ001723 – 001726]		Admit
5202	1946	The City of San Jose 1946 City Charter Amendment. [SJ001727 – 001741]		Admit
5203	April 12, 1960	Ballot pamphlet for Charter Amendment – Proposition A, including “Argument in Favor of Proposition A.” [SJRJN000384 – 000386]		Admit
5204	1961	The City of San Jose 1961 City Charter Amendment. [SJ001742 – 001746]		Admit
5205	January 24, 1961	California Assembly Concurrent Resolution No. 17. [SJRJN000376 – 000383]		Admit
5206	May 26, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000495-000496]		Admit
5207	September 1, 1964	Letter from Manager Edward Grossheider to the Chairman of the Charter Revision Committee re: revision of wording pertaining to Section 1601 of the City Charter. [SJRJN000497]	Auth	
5208	September 1, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000498-000499]		Admit
5209	October 13, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000500-000501]		Admit
5210	October 13, 1964	Memorandum of Fire and Police Retirement Plan presented by District Chief Leonard Marks of San Jose Fire Department. [SJRJN000502]	Auth	
5211	October 20, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000503-000504]		Admit

City Charter [5200 series]				
Ex. No	Date	Description	ID	EV
5212	October 27, 1964	Letter from Manager Edward A. Grossheider to George Starbird, Chairman of the San Jose City Charter Committee re: recommendations for final draft of new proposed charter. [SJRJN000505-000506]	Auth	
5213	December 4, 1964	Letter from Retirement Committee of the Municipal Employees Federation to Charter Revision Committee re: "Inclusions of basic retirement benefits now in existence for the Federated City Employee Retirement System." [SJRJN000507]	Auth	
5214	December 8, 1964	The City of San Jose Charter Committee meeting minutes. [SJRJN000508-000509]		Admit
5215	May 4, 1965	California Assembly Concurrent Resolution No. 104, approving Charter of the City of San Jose, and 1965 City Charter. [SJRJN000387 – 000450]		Admit
5216	November 2012	San Jose City Charter: In effect May 1965, As Amended through November 2012. [SJRJN000001 – 000089]		Admit
5217	November 10, 1964	The City of San Jose Charter Committee meeting minutes. [SJ003273 – 003275]		Admit

Municipal Code [5300 series]				
Ex. No	Date	Description	ID	EV
5300	December 12, 2012	City of San Jose Ordinance No. 29174, "An Ordinance of the City of San Jose Amending Various Sections of Chapter 3.28 of Title 3 of the San Jose Municipal Code to Clarify the City Charter Supersedes the Federated City Employees Retirement Plan in Event of Conflict, Clarify the Definition of Tier 2 Member, Discontinue the Supplemental Retiree Benefit Reserve, Clarify Actuarial Soundness is Determined Consistent with the California Constitution, and Make Additional Requirements for Mandatory Medicare Enrollment, to be effective January 4, 2013. [GURZA000748 – 000761]		Admit

Municipal Code [5300 series]				
Ex. No	Date	Description	ID	EV
5301	January 29, 2013	City of San Jose Ordinance No. 29198, "An Ordinance of the City of San Jose Amending Various Sections of Chapters 3.32 and 3.36 of Title 3 of the San Jose Municipal Code to Clarify the City Charter Supersedes the City of San Jose Police and Fire Retirement Plan in Event of Conflict, Discontinue the Supplemental Retiree Benefit Reserve, and Clarify Actuarial Soundness is Determined Consistent with the California Constitution, to be Effective March 1, 2013." [SJRJN000595-000604]		Admit
5302	Undated	San Jose Municipal Code, Chapter 3.28, "1975 Federated Employees Retirement Plan Sections 3.28.010 to 3.28.2770 [Current to June 30, 2012]. [SJRJN000112 – 000230]		Admit
5303	Undated	San Jose Municipal Code, Chapter 3.36 "1961 Police and Fire Department Retirement Plan," Sections 3.36.010 to 3.36.3760 [Current to June 30, 2012]. [SJRJN000231 – 000375]		Admit

Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
5400	May 12, 1971	Memorandum from City Manager Thomas Fletcher to City Council re: "Definition of Prior Service – Police and Fire Retirement Plan." [SJRJN000510-000511]	Auth	
5401	July 12, 1971	City of San Jose Resolution No. 40059, "A Resolution of the Council of the City of San Jose Requesting Board of Administration for Police and Fire Retirement Plan to Adjust Rates of Contribution for City and for Fire Department Members and Police Department Members of Police and Fire Department Retirement Plans." [SJRJN000512-000514]		Admit
5402	August 16, 1978	Letter from Actuary E. Allen Arnold, and Associate Actuary Christine Nelson to Retirement and Benefits Administrator	Auth	

Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
		Edward Overton re: Police & Fire Contribution Rates. [SJRJN000519-000525]		
5403	June 30, 1979	Lawrence Mitchell & Associates, Inc. Consulting Actuaries' Actuarial Investigation and Valuation for the City of San Jose Police and Fire Department Retirement Plans. [SJRJN000526-000566]	Auth	
5404	July 3, 1979	City of San Jose Ordinance No. 19690, "An Ordinance of the City of San Jose Amending Topic 9 of Part 3A of Chapter 9 of Article II of the San Jose Municipal Code by Amending Section 2903.279 and Section 2903.280 to provide for increasing City's contribution for services rendered by members or persons prior to increase in the contribution rates." [SJRJN000515-000518]		Admit
5405	N/A	Withdrawn.		
5406	June 16, 2009	City of San Jose Resolution No. 74988, "A Resolution of the Council of the City of San Jose Approving Implementation of the Terms Contained in the City's Last, Best, and Final Offer to the Operating Engineers, Local No. 3, effective June 28, 2009." [GURZA000696]		Admit
5407	April 30, 2010	Letter from Randy Sekany to Mayor and City Council Members re: budget proposal submitted to Employee Relations. [SJ001747 - 001748]	Auth	
5408	April 30, 2010	Letter from Randy Sekany to Alex Gurza re: budget proposal. [SJ001749 - 001750]	Auth	
5409	May 14, 2010	IBEW Union Proposal to City to pay increased employee contribution rate. [GURZA000086-000087]	Auth	
5410	May 17, 2010	OE#3 Union Proposals to City to pay increased employee contribution rate. [GURZA000082-000085]	Auth	
5411	May 17, 2010	SJ POA Union Proposals to City to pay increased employee contribution rate. [GURZA000088-000090]	Auth	

Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
5412	May 17, 2010	OE#3 Proposal to the City of San Jose. [SJ001751]	Auth	
5413	May 25, 2010	Draft of Local 230 Settlement Proposal. [SJ001752 – 001753]	Auth	
5414	June 9, 2010	IAFF letter and proposal to City to pay increased employee contribution rate. [GURZA000091-000093]	Auth	
5415	June 11, 2010	OE3's Last Best and Final Offer to City of San Jose. [SJ001754]	Auth	
5416	June 11, 2010	Letter from William Pope to Gina Donnelly re: Last, Best and Final Offer. [SJ001755]	Auth	
5417	June 15, 2010	Association of Legal Professionals (ALP) – Resolution No. 75419 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000205 – 000217]	Auth	
5418	June 15, 2010	City of San Jose Ordinance No. 28752, "An Ordinance of the City of San Jose Amending Chapters 3.28 and 3.44 of Title 3 of the San Jose Municipal Code to Add New Sections 3.28.755, 3.28955, and 3.44.105 and Amend Sections 3.28.770 and 3.28.780 to Implement Revisions in Employee and Employer Retirement Contributions for the Federated City Employees Retirement System." [HAR 191-196]		Admit
5419	June 17, 2010	City Council Agenda attaching transcript of Christopher Platten's comments to City Council. [GURZA000096 – 000097]	Auth	
5420	June 17, 2010	Coalition of Unions agreement to make additional pension contributions. [GURZA000094-000095]	Auth	
5421	June 18, 2010	Coalition of Union Proposal offered to City. [GURZA000081]	Auth	
5422	June 21, 2010	Letter from Sekany to Gurza re: IAFF Local 230 and City of San Jose (2009 MOU Negotiations). [SJ001756 – 001758]	Auth	

Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
5423	July 1, 2010	Letter from Sekany to Gurza re: San Jose Fire Fighters Local 230 Contract Proposal of June 21, 2010. [SJ001759 – 001761]	Auth	
5424	July 15, 2010	San Jose Firefighter Settlement Proposal. [SJ001762 – 001764]	Auth	
5425	January 18, 2011	Memorandum from Jeff Welsh regarding San Jose Firefighters, IAFF Local Settlement Proposal. [SJ001765 – 001769]	Auth	
5426	February 1, 2011	Memorandum from Jeff Welsh regarding San Jose Firefighters, IAFF Local Settlement Proposal. [SJ001770 – 001775]	Auth	
5427	March 3, 2011	City of San Jose and San Jose Firefighters, Local 230 Tentative Agreement for the term of July 1, 2009 thru June 30, 2013. [SJ001776 – 001811]	Auth	
5428	March 7, 2011	Email from union representative Nancy Ostrowski (IPFTE Local 21). [GURZA000613]	Auth	
5429	Undated	Chart of Firefighters Association Proposals re: contribution rates. [SJ001812 – 001818]	Auth	
5430	Undated	San Jose Firefighters, IAFF Local 230 Settlement Proposal –Last Best Final for the term of July 1, 2009 thru June 30, 2013. [SJ001819 – 001823]	Auth	
5431		Withdrawn		
5432	May 16, 2013	2013 POA Negotiations – City Package Proposal for Settlement. [SJ003751-003756]	Auth	
5433	June 20, 2013	2013 OE#3 Negotiations City Package Proposal C*. [SJ003757-003764]	Auth	
5434	February 4, 1996 to February 3, 2000	Memorandum of Agreement on Retirement Benefits between The City of San Jose, International Association of Firefighters, Local 230 and The San Jose Police Officers' Association. [SJ003839 –	Auth	

Pension Contribution Rate Documents [5400 series]				
Ex. No	Date	Description	ID	EV
		003845]		
5435	June 17, 2010	Video clip of Christopher Platten's comments to City Council.	Auth	

Resolutions approving Agreements [5450 series]				
Ex. No	Date	Description	ID	EV
5450	April 27, 2010	Association of Building, Mechanical and Electrical Inspectors (ABMEI) – Resolution No. 75362 approving and terms of Last, Best and Final Offer, effective June 27, 2010. [GURZA000098-000120]		Admit
5451	May 31, 2011	ABMEI – Resolution No. 75810 approving and terms of MOA (7/1/11-6/30/13). [GURZA000121-000144]		Admit
5452	June 22, 2010	Association of Engineers and Architects (AEA) – Resolution No. 75451 approving and terms of MOA (7/1/10-6/30/11). [GURZA000145-000174]	Auth	
5453	April 19, 2011	AEA – Resolution No. 75777 approving and terms of MOA (7/1/11-6/30/13). [GURZA000175-000204]	Auth	
5454	June 15, 2010	Association of Legal Professionals (ALP) – Resolution No. 75419 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000205 – 000217]		Admit
5455	May 31, 2011	ALP – Resolution No. 75813 approving and terms of Agreement (7/1/11 – 6/30/12). [GURZA000218 – 000228]		Admit
5456	June 22, 2010	Association of Maintenance Supervisory Personnel (AMSP) – Resolution No. 75452 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000229 – 000234]		Admit
5457	April 19, 2011	AMSP – Resolution No. 75778 approving and terms of Agreement (7/1/11 – 6/30/13). [GURZA000235 – 000259]		Admit

5458	June 22, 2010	City Association of Management Personnel (CAMP) – Resolution No. 75449 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000260 – 000265]		Admit
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Resolutions approving Agreements [5450 series]				
Ex. No	Date	Description	ID	EV
5459	April 19, 2011	CAMP – Resolution No. 75779 approving and terms of Agreement. (7/1/11 – 6/30/13). [GURZA000266 – 000290]		Admit
5460	October 21, 2008	Confidential Employees' Organization (CEO), AFSCME 101 – Resolution No. 74635 approving and terms of MOA (9/21/08 – 9/17/11). [GURZA000291 – 000305]		Admit
5461	May 31, 2011	CEO – Resolution No. 75815 approving and terms of Last, Best and Final Offer (9/18/11 – 9/15/12). [GURZA000306 – 000328]		Admit
5462	March 22, 2011	International Association of Firefighters (IAFF) – Resolution No. 75762 approving and terms of Agreement (7/1/09 – 6/30/13). [GURZA000329 – 000371]	Auth	
5463	March 22, 2011	IAFF – Resolution No. 75762 approving and terms of Agreement (7/1/09- 6/30/13). [GURZA000372 – 000414]	Auth	
5464	March 22, 2010	International Brotherhood of Electrical Workers, Local 332 (IBEW) – Resolution No. 75450 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000415 – 000425]		Admit
5465	May 31, 2011	IBEW – Resolution No. 75811 approving and terms of Last, Best and Final Offer (7/1/11 – 6/30/12). [GURZA000426 – 000448]		Admit
5466	June 22, 2010	Operating Engineers, Local No. 3 (OE#3) – Resolution No. 75453 approving and terms of Agreement (7/1/10 – 6/30/11). [GURZA000449 – 000461]	Auth	

1	5467	May 31, 2011	OE#3 – Resolution No. 75812 approving and terms of Last, Best and Final Offer (7/1/11 – 6/30/12). [GURZA000462 – 000484]	Auth	
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4	5468	August 5, 2008	Municipal Employees' Federation (MEF), AFSCME Local 101 – Resolution No. 74525 approving and terms of MOA (7/1/08 – 6/30/11). [GURZA000485 – 000503]		Admit
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Resolutions approving Agreements [5450 series]

Ex. No	Date	Description	ID	EV
9	5469	May 31, 2011	MEF – Resolution No. 75814 approving and terms of Last, Best and Final Offer (7/1/11 – 6/30/12). [GURZA000504 – 000527]	Admit
10				
11				
12	5470	August 3, 2010	San Jose Police Officers' Association (SJPOA) – Resolution No. 75507 approving and terms of MOA (7/1/10 – 6/30/11). [GURZA000528 – 000561]	Admit
13				
14	5471	June 14, 2011	SJPOA – Resolution No. 75846 approving and terms of Agreement (7/1/11 – 6/30/12). [GURZA000562 – 000590]	Admit
15				
16				
17	5472	January 10, 2012	SJPOA – Resolution No. 76118 approving and terms of Agreement (7/1/11 – 6/30/13). [GURZA000591 – 000596]	Admit
18				
19	5473	April 27, 2010	Executive Management and Professional Employees (Unit 99) and Other Unclassified Non-Management Employees (Units 81 and 82) – Resolution No. 75363 approving Resolution for 4.75% salary reduction, effective June 27, 2010. [GURZA000597 – 000602]	Admit
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24	5474	June 17, 2010	Executive Management and Professional Employees (Unit 99) and Other Unclassified Non-Management Employees (Units 81 and 82) – Resolution No. 75436 approving Resolution for 5.4% salary reduction, effective June 27, 2010. [GURZA000603 – 000607]	Admit
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5475	April 19, 2011	Executive Management and Professional Employees (Unit 99) and Other Unclassified Non-Management Employees (Units 81 and 82) – Resolution No. 75780 approving Agreement for 4.75% and 5.4% salary reductions. [GURZA000608 – 000612]		Admit
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Retiree Healthcare [5500 series]				
Ex. No	Date	Description	ID	EV
5500	February 24, 1988	Memorandum from Federated Board of Administration to Mayor and City Council regarding Federated Retirement Benefit Increases. [SJRJN000457 – 000460]		Admit
5501	January 12, 2007	Letter from Paul Angelo and Andy Yeung to Edward Overton regarding City of San Jose Police and Fire Department Medical and Dental Insurance Plan GASB Statements No. 43 and No. 45 Results Using Requested Assumptions. [GURZA000637 – 000645]	Auth	
5502	July 2007	Report from Bartel and Associates, LLC regarding City of San Jose Retiree Healthcare Plan, June 30, 2007 – Actuarial Valuation Federated City Employees. [GURZA000629 – 000636]		Admit
5503	July 24, 2007	Memorandum from Alex Gurza, Mark Danaj, and Scott Johnson to Honorable Mayor and City Council regarding Retiree Healthcare. [GURZA000614 – 000628]	Auth	
5504	February 24, 2009	Resolution No. 74803 approving and terms of Agreement between City and SJPOA re: Retiree Healthcare Funding. [GURZA000673 – 000686]		Admit
5505	April 7, 2009	Memorandum from Alex Gurza to Honorable Mayor and City Council regarding Retiree Healthcare Funding. [GURZA000646 – 000670]	Auth	
5506	April 21, 2009	City of San Jose Resolution No. 74882, “A Resolution of the Council of the City of San Jose Approving Agreements between the City of San Jose and Several Bargaining Units regarding Retiree Healthcare Funding, and Implementing Retiree Healthcare Funding for Units 99		Admit

Retiree Healthcare [5500 series]				
Ex. No	Date	Description	ID	EV
		and 82." [GURZA000671 – 000672]		
5507	June 1, 2009	Last, Best and Final Offer from City to OE#3. [GURZA000687 – 000000695]		Admit
5508	June 11, 2013	Memorandum from Alex Gurza to Mayor and City Council re: Implementation of Changes to Retiree Healthcare and Four-Tier Insurance Premium Rates for the Bargaining Units Representing Employees in the Federated City Employees' Retirement System and Modifications for Employees in Unit 99. [SJ001824 – 001876]		Admit
5509	N/A	Withdrawn, see Ex. 5508.		

Low Cost Plan Documents [5600 series]				
Ex. No	Date	Description	ID	EV
5600	April 17, 2012	Memorandum from Debra Figone to Mayor and City Council re: Adoption of a resolution approving benefit changes for executive management and professional employee. [SJ001877 – 001889]		Admit
5601	April 27, 2012	Memorandum from Debra Figone to Mayor and City Council re: Supplemental Information for Items 3.3 – 3.12. [SJ001890 – 00SJ001893]		Admit
5602	June 12, 2012	City of San Jose Minutes of the City Council. [SJ001894 – 001923]	Auth	
5603	Undated	City of San Jose Summary of Benefit Plan Changes effective January 1, 2013. [SJ001924 – 001928]		Admit
5604	N/A	Health Insurance Premium Schedules. [SJ003333 – 003335]		Admit
5605	October 26, 2012	Health Insurance Plan Descriptions. [SJ003336 – 003346]		Admit

SRBR Documents [5700 series]				
Ex. No	Date	Description	ID	EV

SRBR Documents [5700 series]				
Ex. No	Date	Description	ID	EV
5700	November 22, 1985	Letter from Coates Herfurth & England, Inc. to Retirement and Benefits Administrator regarding SB650 Study. [SJRJN000489 – 000492]	Auth	
5701	April 25, 1986	Memorandum from Federated Retirement Board to Honorable Mayor and City Council regarding Supplemental Retiree Benefits Reserve. [SJRJN000493 – 000494]		Admit
5702	May 6, 1986	Memorandum from Fran Galloni to Honorable Mayor and City Council regarding Retirement Benefit Increase. [SJRJN000451 – 000452]	Auth	
5703	February 24, 1988	Memorandum from Frances Galloni to Mayor and City Council regarding Administration's Report on Federated Retirement Benefit Increases. [SJRJN000455 – 000456]		Admit
5704	March 21, 1988	Memorandum from Joan Gallo to Mayor and City Council regarding Benefit Increases – Federated Retirement System and possible elimination of SRBR. [SJRJN000453 – 000454]		Admit
5705	January 29, 2002	City of San Jose Resolution No. 70822, "A Resolution of the Council of the City of San Jose Approving the Methodology for the Distribution of Moneys in the Supplemental Retiree Benefit Reserve of the Police and Fire Department Retirement Fund." [SJRJN000484 – 000488]		Admit
5706	December 16, 2003	City of San Jose Resolution No. 71870, "A Resolution of the Council of the City of San Jose Approving the Methodology for the Distribution of Moneys in the Supplemental Retiree Benefit Reserve of the Federated City Employees Retirement Fund." [SJ001929 – 001936]		Admit
5707	October 22, 2010	Memorandum from Debra Figone to Honorable Mayor and City Council regarding Suspension of SRBR Payments. [GURZA000697 – 000722]		Admit

SRBR Documents [5700 series]				
Ex. No	Date	Description	ID	EV
5708	November 16, 2010	City of San Jose Resolution No. 75635, "A Resolution of the Council of the City of San Jose Amending and Restating the Supplemental Retiree Benefit Reserve of the Federated City Employees Retirement Fund, to Suspend the Distribution of Funds from the Reserve During Fiscal Year 2010-2011. [SJRJN000461 – 000471]		Admit
5709	May 13, 2011	Memorandum from Figone to Honorable Mayor and City Council regarding Continued Suspension of SRBR Payments. [GURZA000723 – 000727]		Admit
5710	August 23, 2011	Tentative Agreement with AMBEI regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000743]		Admit
5711	August 23, 2011	Tentative Agreement with IBEW regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000744]		Admit
5712	August 23, 2011	Tentative Agreement with OE#3 regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000745]	Auth	
5713	August 23, 2011	Tentative Agreement with CEO regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000746]	Auth	
5714	August 23, 2011	Tentative Agreement with MEF regarding Supplemental Retiree Benefit Reserve (SRBR). [GURZA000747]	Auth	
5715	January 13, 2012	Letter from William Hallmark and Anne Harper to Russell Crosby regarding Federated Employees Retirement Plan – Supplemental Retiree Benefit Reserve as of June 30, 2011. [GURZA000734 – 000738]		Admit
5716	March 29, 2012	Letter from Hallmark and Joshua Davis to Russell Crosby regarding City of San Jose Police and Fire Department Retirement Plan – Supplemental Retiree Benefit Reserve as of June 30, 2011. [GURZA000739 – 000742]	Auth	
5717	April 9, 2012	Memorandum from Figone to Honorable Mayor and City Council regarding Suspension of SRBR Payments.		Admit

SRBR Documents [5700 series]				
Ex. No	Date	Description	ID	EV
		[GURZA000728 – 000733]		
5718	April 24, 2012	City of San Jose Resolution No. 76204, "A Resolution of the Council of the City of San Jose Amending and Restating Resolution No. 75635 Regarding the Supplemental Retiree Benefit Reserve of the Federated City Employees Retirement Fund, to Suspend the Distribution of Funds From the Reserve Through Fiscal Year 2012 – 2013. [SJRJN000472 – 000483]		Admit
5719	June 26, 1986	Memorandum from Edward Overton to Members of the Federated Employees Retirement System regarding New Retirement Benefits and Lower Contribution Rates. [SJ002168]	Auth	

Disability Retirement Documents [5800 series]				
Ex. No	Date	Description	ID	EV
5800	N/A	Return to Work Policy. [SJ003347 – 003349]	Auth	
5801	N/A	Long Term Disability Insurance Plan Documents. [SJ003479 – 003492]	Auth	
5802	N/A	Long Term Disability Proposal. [SJ003350 – 003352]	Auth	
5803	N/A	Excerpts from Employee Benefits Handbook. [SJ003493 – 003500]		Admit

Actuarial Documents [5900 series]				
Ex. No	Date	Description	ID	EV
5900	February 8, 2012	Letter from Gene Kalwarski and Margaret Tempkin to Russell Crosby regarding 5 – year Budget Projections for Federated. [GURZA000770 – 000772]		Admit
5901	February 21, 2012	Letter from Kalwarski and Tempkin to Crosby regarding 5-year Budget Projections for Police & Fire. [GURZA000773 - 000778]		Admit
5902	December 2012	Cheiron's Actuarial Valuation regarding Federated City Employees' Retirement System, June 30, 2012 to December 2012. [GURZA000779 – 000837]		Admit
5903	December 2012	Cheiron's Actuarial Valuation regarding City of San Jose Police and Fire Department Retirement Plan, June 30, 2012 to December 2012. [GURZA000838 – 000890]		Admit
5904	January 9, 2013	Cheiron letter to City of San Jose Board of Administration re: 5-year Budget Projections for Federated. [SJ001937 – 001939]		Admit
5905	January 17, 2013	Cheiron's OPEB Actuarial Valuation Results regarding San Jose Federated City Employees' Retirement System, June 30, 2012. [GURZA000891 – 000905]		No stip (power-point, not a report)
5906	January 30, 2013	Cheiron letter to City of San Jose Board of Administration re: 5-year Budget Projections for Police & Fire. [SJ001940 – 001945]		Admit
5907	February 7, 2013	Cheiron's OPEB Actuarial Valuation Results regarding City of San Jose Police and Fire Department Retirement System, June 30, 2012. [GURZA000906 – 000924]		Admit
5908	June 30, 2012	City of San Jose Federated City Employees' Retirement System Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2012. [SJ003353 – 003478]		Admit
5909	June 30, 2012	City of San Jose Police and Fire Department Comprehensive Annual Financial Report for the Fiscal Year Ended		Admit

Actuarial Documents [5900 series]				
Ex. No	Date	Description	ID	EV
		June 30, 2012. [SJ003501 – 003632]		

Demonstrative Exhibits [6000 Series]				
Ex. No	Date	Description	ID	EV
6000	N/A	Chart Depicting Service Retirement Benefit (Police and Fire).		
6001	N/A	Chart Depicting Service Retirements (Police and Fire Plan) – Plaintiffs and witnesses.		
6002	N/A	Ten Highest Annual Pensions – Police and Fire Plan.		
6003	N/A	Withdrawn.		
6004	N/A	Chart Depicting Service Retirement Benefit (Federated Plan).		
6005	N/A	Chart Depicting Examples of Service Retirements (Federated Plan) – Plaintiffs and witnesses.		
6006	N/A	Ten Highest Annual Pensions – Federated Members.		
6007	N/A	Withdrawn.		
6008	N/A	Retirement Cost Increases: FY 2001-2002 to FY 2011-2012.		
6009	N/A	10 Years of Budget Deficits – How Did We Get Here?		
6010	N/A	Contribution Rates (based on June 30, 2012 Valuation) – Police and Fire: 2003-2014.	Auth	
6011	N/A	Contribution Rates – Federated Plan: 2003-2014.	Auth	
6012	N/A	Retirement Contribution Rates (Police and Fire) – 2011 and 2012 Valuations.	Auth	
6013	N/A	Retirement Contribution Rates (Federated) – 2011 and 2012 Valuations.		
6014	N/A	Withdrawn.		

1	Demonstrative Exhibits [6000 Series]				
2	Ex. No	Date	Description	ID	EV
3	6015	N/A	Withdrawn.		
4	6016	N/A	\$670 Million in Cumulative General Fund Shortfalls Balanced through 2012-2013.		
5	6017	N/A	Withdrawn		
6	6018	N/A	Average Total Compensation – All Sworn Police Employees.		
7	6019	N/A	Total Compensation – Fire Employees (Plaintiffs)		
8	6020	N/A	Total Compensation – Miscellaneous Employees (Plaintiffs and Designated witnesses).		
9	6021	N/A	Police Department: Budget and Staffing – FY 2001-02 to FY 2011-2012.		
10	6022	N/A	Withdrawn.		
11	6023	N/A	Compensation Concessions (FY 2010-11; 2011-12; 2012-13).		
12	6024	N/A	Withdrawn.		
13	6025	N/A	Withdrawn.		
14	6026	N/A	\$20 Million in Savings Subject to Litigation.		
15	6027	N/A	Contribution Rates – 1965 Charter Police and Fire/ Federated.		
16	6028	N/A	Chronology of Charter Progression (Reservation of Rights).		
17	6029	N/A	Unfunded Liabilities – Federated.		
18	6030	N/A	Unfunded Liabilities – Police and Fire.		
19	6031	N/A	MOU Excerpts (Contributions to Pension – Police and AEA – 2010 – 2011).		
20	6032	N/A	MOU Excerpts (Contributions to Retiree Health – Police and AEA – 2010 – 2011).		

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Demonstrative Exhibits [6000 Series]				
Ex. No	Date	Description	ID	EV
6033	N/A	Disability Flow Chart.		
6034	N/A	Withdrawn.		
6035	N/A	Benefit Payments Grew Seven Fold Over 20 Years.		
6036	N/A	Pension Benefit Payments Have Exceeded Contributions Since 2001.		
6037	N/A	Funded Ratios Have Fallen.		
6038	N/A	The City's Contribution Rates for Pension and Retiree Healthcare are Projected to Rise Dramatically.		
6039	N/A	Retroactive Pension Benefit Enhancements Added to the Unfunded Liability.		
6040	N/A	Withdrawn.		
6041	N/A	Withdrawn.		
6042	N/A	Withdrawn.		
6043	N/A	Withdrawn.		
6044	N/A	Withdrawn.		
6045	N/A	Withdrawn.		
6046	N/A	Withdrawn.		
6047	N/A	Withdrawn.		
6048	N/A	Withdrawn.		
6049	N/A	Retirement Benefits/Measure B impact [John Mukhar].		
6050	N/A	Withdrawn.		
6051	N/A	Withdrawn.		
6052	N/A	Withdrawn.		
6053	N/A	Withdrawn.		
6054	N/A	Withdrawn.		

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Demonstrative Exhibits [6000 Series]				
Ex. No	Date	Description	ID	EV
6055	N/A	Retirement Benefits/Measure B Impact [Robert Sapient].		
6056	N/A	Withdrawn.		
6057	N/A	Withdrawn.		
6058	N/A	Withdrawn.		
6059	N/A	SRBR – Unforeseen Consequences.		
6060	N/A	Service vs. Disability Retirement Chart.		
6061	N/A	Compensation Pay Cut vs. Retirement Contribution.		
6062				
6063				
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6065				
6066				
6067		Union Opp Brief 2/11/98	C.P.	
6068	pg 14 J.W.	Union opp Brief 2/11/98		Adm.'t
6069	pg 15 J.W.	Union's Initial Post Hearing Brief 8/10/97		Adm.'t
6070				
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Demonstrative Exhibits [6000 Series]				
Ex. No	Date	Description	ID	EV
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Other California City Charters [6100 series]				
Ex. No	Date	Description	ID	EV
6100	N/A	San Diego City Charter. [SJ003633 – 003645]	Auth	
6101	N/A	1996 San Francisco City Charter Preamble. [SJ003646 – 003648]	Auth	
6102	N/A	Proposition C, City Pension and Health Care Benefits. [SJ003649 – 003727]	Auth	

SJPOA EXHIBITS

San Jose Police Officers' Association withdraws the following exhibits: 5, 27, 29, 36, and 37. In addition, the parties stipulate to the following.

SJPOA EXHIBIT No.	DESCRIPTION	ID	EV
1	Chapter 5, Statutes of California, First Extraordinary Session 1946 pertaining to Assembly Concurrent Resolution No. 4 – Relative to approving certain amendments to the Charter of the City of San Jose		Admit
2	Chapter 20, Statutes of California 1960 and 1961, Volume 2, pertaining to Assembly Concurrent Resolution No. 17 – Approving a certain amendment to the charter of the City of San Jose		Admit
3	The City of San Jose Resolution No. 40129 (1971)		Admit
4	The City of San Jose Ordinance No. 19690 (1979)		Admit
6	San Jose City Ordinance No. 21686 (1984)		Admit
7	Chapter 10 of the San Jose Police and Fire Department Retirement Plan Handbook - Fall 1995		Admit
8	Chapter 10 of the San Jose Police and Fire Department Retirement Plan Handbook - Fall 1997		Admit
9	San Jose City Ordinance No. 25615 (1998)		Admit
11	A recruiting flyer issued by the City in 2002 states: "Retirement options begin with 20 years of service and age 55 for 50% of salary. Regular retirement is 25 years of service and age 50 for 65% of salary. 30 years of service provides an 85% retirement with a guaranteed cost of living raise of 3% every year after retirement for all plans."		Admit
12	Memorandum of Agreement 2004-2008		Admit
13	The City of San Jose Retirement System Newsletter, April 2005	Auth	
14	San Jose City Ordinance 27721 (2006)		Admit
15	Excerpts from the Notes to Financial		Admit

1		Statements and Actuarial Certification Letter from the City of San Jose Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2007		
2	16	Excerpts from the Notes to Financial Statements and Actuarial Certification Letter from the City of San Jose Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2008		Admit
3	17	Excerpts from the Notes to Financial Statements and Actuarial Certification Letter from the City of San Jose Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2009		Admit
4	18	Excerpts from the Notes to Financial Statements and Actuarial Certification Letter from the City of San Jose Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2010		Admit
5	19	Printout from City of San Jose webpage: City of San Jose Retirement Benefits Frequently Asked Questions, September 2010	Auth	
6	20	Memo from Alex Gurza, the City's Director of Employee Relations, to Russell Crosby, the City's Director of Retirement Services		Admit
7	23	Excerpts from the Notes to Financial Statements and Actuarial Certification Letter from the City of San Jose Police and Fire Department Retirement Plan Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2011		Admit
8	25	John Robb's individual annual retirement statement from Police and Fire Retirement Fund for FY 2010-2011.		Admit
9	26	March 2012 Printout from San Jose Police Department "Salary and Benefits" webpage		Admit
10	30	Recruiting flyers and booklets stating that Police Officers are provided pensions from City of San Jose's Retirement Plan. Several	Auth	

	flyers state: "Up to 90% of Salary for Retirement (30 years of service) with 3% Annual Cost of Living Increase."		
31	San Jose Municipal Code Chapter 3.36		Admit
32	Retirement Handbook excerpts, as pertain to: Disability Retirement		Admit
34	Measure B Election Materials		Admit
35	Bogue Arbitration Award re City of San Jose and San Jose Police Officers' Association involving negotiations impasse over retirement benefits		Admit
38	San Jose Resolution 76158 and Full Text of Measure B		Admitted as 5101
39	City Charter May 1965-November 2012 with Legislative History Document		Admit
40	San Jose Municipal Code Chapter 3.44		Admit
42	San Jose Ordinance No. 29198 re Elimination of SRBR from Police and Fire Retirement Plan		Admitted as 5301
43	Charter Revision Committee Minutes dated February 18, 1959		Admit
44	Excerpts from Statutes of California, Chapter 76, Assembly Concurrent Resolution No. 104 - Approving the Charter of the City of San Jose, a municipal corporation of the State of California, voted for and ratified by the qualified voters of said city at a municipal election held therein on the 13 th day of April 1965 from the 1965 Regular Session		Admit (5216)
45	Ballot Arguments in favor of and against Proposition One		Admit
46	Charter Revision Committee Minutes dated July 14, 1959		Admit
47	Charter Revision Committee Minutes dated August 11, 1959		Admit
48	Memorandum of Agreement on Retirement Benefits for the Period February 4, 1996 through February 3, 2000		Admit
49	Memorandum of Agreement on Retirement Benefits for the Period February 4, 2000 through June 30, 2004		Admit

24 San Jose Pension Problems - AUTHENTICATION

CBM-SF/SF596061.2

-27-

STIPULATION AND [PROPOSED] ORDER REGARDING TRIAL EXHIBITS

CP
VS
A.W.
K9

3/2/04 CS

AFSCME LOCAL 101 EXHIBITS

1. The parties stipulate to the admissibility of the following AFSCME trial exhibits: 300-320, 323-327, 363-364, 367, 370, 373, 397-400, 401 from Bate Numbers AFSCME2923-2974, 402 from Bate Numbers 2985-3037 and 3044-3045, 405-409, 415-421, 443-446, 453, 455, 457, 468-470, 473, and 475.

2. The parties stipulate to the authenticity of the following AFSCME trial exhibits: 328-358, 361-362, 365-366, 371, 410-411, 413, 414 from Bate Numbers AFSCME4069-4010, 441, 451, and 511-521.

3. AFSCME withdraws the following trial exhibits: 372, 404, 412, 442, 452, 454, 456, 458-467, 471, 474, 476, 477-480, 500-502, and 522.

4. AFSCME Exhibit 357, includes exhibit Bates Numbers AFSCME1485-1496, and all other pages are withdrawn.

1 Dated: July 26, 2013

2 MEYERS, NAVE, RIBACK, SILVER &
3 WILSON

4
5 By 

Arthur A. Hartinger

Linda Ross

Geoffrey Spellberg

6 Attorneys for Defendant and Cross-
7 Complainant City of San Jose

8
9 Dated: July __, 2013

10 WYLIE, McBRIDE, PLATTEN & RENNER

11
12 By 

John McBride

Christopher E. Platten

13 Attorneys for Plaintiffs and Cross-Defendants in
14 the *Sapien*, *Harris*, and *Mukhar* cases

15
16 Dated: July 25, 2013

17 BEESON, TAYOR & BODINE, APC

18
19 By 

Teague P. Paterson

Vishtasp M. Soroushian

20 Attorneys for Plaintiffs and Cross-Defendants in
21 *AFSCME*, Local 101

22
23 Dated: July 26, 2013

24
25 SILVER, HADDEN, SILVER, WEXLER &
26 LEVINE

27 By 

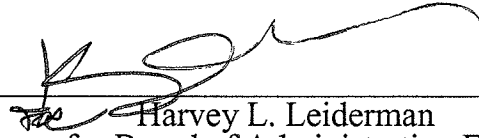
28 Stephen H. Silver

Jacob Kalinski
Attorneys for Plaintiff San Jose Retired
Employees' Association

Dated: July 26, 2013

REED SMITH, LLP

By

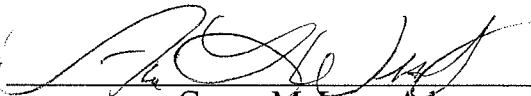


Harvey L. Leiderman
Attorneys for Board of Administration For Police
and Fire Department Retirement Plan of City of
San Jose and Federated City Employees
Retirement System, Necessary Party in Interest

Dated: July 26, 2013

CARROLL, BURDICK & McDONOUGH LLP

By

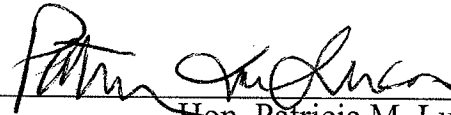


Gregg McLean Adam
Gonzalo C. Martinez
Amber L. West
Attorneys for Plaintiff and Cross-Defendant
San Jose Police Officers' Association

ORDER

The foregoing Stipulation having been received and good cause appearing,
IT IS SO ORDERED:

Dated: July 29, 2013



Hon. Patricia M. Lucas
Judge of the Superior Court

EXHIBIT E

1 TEAGUE P. PATERSON, SBN 226659
2 VISHTASP M. SOROUSHIAN, SBN 278895
3 **BEESON, TAYER & BODINE, APC**
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5 Oakland, CA 94607-4051
6 Telephone: (510) 625-9700
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Email: TPaterson@beesontayer.com
VSoroushian@beesontayer.com

7 Attorneys for Plaintiff and Petitioner,
8 AFSCME LOCAL 101

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SANTA CLARA**

11 AMERICAN FEDERATION OF STATE,
12 COUNTY, AND MUNICIPAL EMPLOYEES,
13 LOCAL 101, on behalf of its members,

14 Plaintiff and Petitioner,

15 v.

16 CITY OF SAN JOSÉ and DEBRA FIGONE in
17 her official capacity as City Manager,

18 Defendants and Respondents,

19 THE BOARD OF ADMINISTRATION FOR
20 THE FEDERATED CITY EMPLOYEES
21 RETIREMENT PLAN,

22 Necessary Party In Interest.

Case No. 1-12-CV-227864;
Consolidated with Case No. 1-12-CV-225926
[Consolidated with cases, nos. 1-12-CV-225928,
1-12-CV-226574 and 1-12-CV227864]

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT OF
MANDAMUS**

1. Unconstitutional Impairment of Contract
(Cal. Const. Art. I § 9 & Civ. Code § 52.1)
2. Unconstitutional Bill of Attainder
(Cal. Const. Art. I § 9 & Civ. Code § 52.1)
3. Unconstitutional Taking of Private Property
(Cal. Const. Art. I § 19 & Civ. Code § 52.1)
4. Unconstitutional Taking of Private Property
Without Due Process
(Cal. Const. art. I § 7 & Civ. Code § 52.1)
5. California Pension Protection Act
(Cal. Const. Art. XVI § 17 & Civ. Code § 52.1)
6. Violation of Constitutional Right to Petition
(Cal. Const. Art. I §§ 2 & 3 & Civ. Code § 52.1)
7. Illegal *Ultra Vires* Tax, Fee or Assessment
(Cal. Const. Art. I, § 7 & Civ. Code § 52.1)
8. Promissory Estoppel and Equitable Estoppel
9. Request for Declaratory Relief
(Code of Civ. Pro. § 1060)
10. Request for Injunctive Relief
(Code of Civ. Pro. §§ 525, 526 & 526(a))
11. Petition for Writ of Mandate
(Code of Civ. Pro. § 1085)

1
2 Plaintiff American Federation of State, County, and Municipal Employees, Local 101 alleges
3 as follows:

4 I. INTRODUCTION

5 1. Plaintiff and petitioner ("Plaintiff" or "Petitioner") brings this suit for declaratory,
6 injunctive, and writ relief in order to declare unconstitutional under the California Constitution the
7 "Sustainable Retirement Benefits and Compensation Act" ("Act" or "Measure B"), approved by the
8 electorate of the City of San José ("City") on June 5, 2012, and to bar its implementation by
9 defendants and respondents ("Defendants" or "Respondents").

10 2. Plaintiff Local 101 of the American Federation of State, County, and Municipal
11 Employees ("AFSCME" or "Union") is the representative of certain groups of miscellaneous
12 employees employed by the City and who are members of the City's Federated City Employees
13 Retirement Plan (collectively referred to herein as "miscellaneous employees," "employees," or
14 "members").

15 3. Under the California Constitution, public employee pension benefits are deferred
16 compensation, and a public employee has a constitutionally-protected contractual and property right
17 to receive such benefits under the terms and conditions in effect at the time such employee accepts
18 employment.

19 4. A public employee's right to the benefits established under a pension plan vests upon
20 commencing employment, because the right to such benefits represents a forbearance of wages or
21 other compensation otherwise immediately earnable through the employee's ongoing service.

22 5. These rights are vested and cannot be reduced or eliminated without impairing this
23 constitutionally-protected contractual obligation and property right.

24 6. Under California law, a right to retiree health benefits and/or benefits in the form of a
25 post-retirement cost of living adjustments ("COLA") may also vest by implication. The resulting
26 contract and property right to receive these forms of benefits, on terms substantially equivalent to
27 those offered by the public employer, similarly arises upon acceptance or continuation of
28

1 employment. Once vested, they cannot be reduced or eliminated without impairing this
2 constitutionally-protected contractual obligation.

3 7. In a memorandum dated December 1, 2011, City Mayor Chuck Reed submitted to the
4 City Council a series of recommendations. In relevant part, he recommended that the City Council
5 refrain from declaring a "Fiscal and Service Level Emergency," and further recommended the City
6 Council adopt a resolution calling for a municipal election on June 5, 2012, for the purpose of placing
7 on the ballot an amendment to the City Charter's ("Charter") provisions governing City employee
8 retirement security.

9 8. By memorandum dated February 21, 2012, City Manager Debra Figone proposed to
10 the Mayor and City Council an Act providing for such amendments to the City Charter, authorizing
11 promulgation of ordinances for the purpose of, *inter alia*, reducing City employee retirement security
12 and reducing wages for City employees who "choose" to retain the level of retirement security
13 promised to them (and for which they have contributed a portion of their wages). Attached to the
14 memorandum were the terms of the Act proposed for placement on the ballot.

15 9. The proposal also called for convening a June 5, 2012 special municipal election for
16 the purpose of placing the Act on the ballot for referendum (as amendments to the City Charter must
17 be approved by the City's electorate).

18 10. On March 6, 2012, the City Council adopted the proposal and directed placement of
19 the Act attached thereto on the June 5, 2012 Ballot.

20 11. The Act was subsequently designated "Measure B" on the ballot (hereinafter referred
21 to as "Measure B.")

22 12. On June 5, 2012, the City electorate passed Measure B by referendum.

23 13. On or about July 5, 2012, the City Clerk certified the results of the June 5 election,
24 including passage of Measure B.

25 14. Among other things, Measure B purports to amend the City Charter such that vested
26 employees' pension benefits will be reduced and additional obligations on the part of employees will
27 be incurred with respect to the City's obligation to fund the retirement security it has promised.
28

1 15. As applied to current employees participating in the Federated City Employees
2 Retirement System, Measure B violates the California Constitution because it substantially impairs
3 the affected employees' right to retirement benefits that vested when they commenced employment
4 and/or continued their employment with the City.

5 16. For example, Measure B violates the California Constitution with respect to current
6 employees because it, *inter alia*:

7 a. Reduces and eliminates portions of employee retirement benefits that are or have
8 become vested;

9 b. Imposes conditions subsequent on the right to receive retirement benefits already
10 earned;

11 c. Is an unconstitutional bill of attainder, as it shifts the burden of financing public debt
12 upon a small class of private parties, and its purpose is to punish such individuals for refusal to
13 relinquish their constitutionally-protected rights and property;

14 d. Constitutes an unconstitutional taking of private property for public use without
15 providing the affected employees with just compensation;

16 e. Constitutes an unconstitutional taking of private property for public use without
17 affording the affected employees with substantive due process;

18 f. Is an unconstitutional retroactive law as it subjects employees to liabilities previously
19 incurred by the City, and obligates active employees to fund liabilities previously incurred by the
20 City with respect to its retiree health obligations;

21 g. Is unconstitutional because it violates the "California Pension Protection Act";

22 h. Violates employee-members' constitutional right to petition the courts by imposing a
23 penalty on employee-members who successfully challenge the legality of the Act through a "poison
24 pill" provision; and

25 i. Imposes an illegal and improper tax by imposing on a specific group of individuals an
26 excise of wages for the purpose of funding the City's general obligations, and such tax or excise is
27 targeted at those individuals who can neither (i) afford to relinquish their constitutionally-protected
28

1 rights to a pension they have earned; or (ii) choose not to forego their constitutionally-protected right
2 to receive the pension they have earned

3 17. Additionally, the City should be prohibited from implementing Measure B pursuant to
4 the common law doctrines of promissory estoppel and equitable estoppel.

5 18. Measure B, if implemented, violates the law as summarized above and further detailed
6 in the allegations below.

7 **II. VENUE/JURISDICTION**

8 19. Petitioner seeks declaratory relief pursuant to California Code of Civil Procedure
9 section 1060.

10 20. Petitioner seeks injunctive relief pursuant to Code of Civil Procedure sections 526 and
11 527 and Civil Code section 52.1.

12 21. This court has jurisdiction over the writ relief requested in this proceeding under Code
13 of Civil Procedure section 1085.

14 22. This action is brought under, and seeks to rectify violations of, the laws of the State of
15 California including its Constitution.

16 23. All parties exist and reside within the County of Santa Clara, and the acts and/or
17 omissions complained of took place within the County of Santa Clara, making this Court the
18 appropriate venue for this action.

19 **III. THE PARTIES**

20 24. Petitioner and Plaintiff AFSCME Local 101 is an unincorporated membership
21 association, and a labor organization as defined by Government Code section 3501.

22 25. AFSCME Local 101, including its affiliated Municipal Employees' Federation
23 ("MEF") and Confidential Employees' Organization ("CEO"), is the recognized exclusive bargaining
24 representative for certain non-managerial employees of the defendant and respondent City of San
25 José.

26 26. AFSCME sues on behalf of, and in the interest of, its members employed by the City.
27 Such members are miscellaneous employees and are members of the City's Federated City
28 Employees Retirement System.

1 27. Measure B purports to affect and substantially impair the rights of AFSCME's
2 members as alleged herein.

3 28. Defendant and Respondent City of San José is a chartered municipal corporation, and
4 an instrumentality of the State of California, which operates under the authority of the California
5 Constitution and the San José City Charter.

6 29. Defendant and respondent Debra Figone is sued in her official capacity as City
7 Manager of the City of San José. The City Charter designates the City Manager as the City's chief
8 administrative officer responsible to the City Council for the administration of the City's affairs
9 placed under her charge. Ms. Figone's duties include but are not limited to executing all laws, City
10 Charter provisions, and any acts of the City Council which are subject to enforcement by her
11 subordinates. Executing Measure B is amongst her duties.

12 30. The Board of Administration for the Federated City Employees Retirement System
13 ("Board") is the Necessary Party in Interest in this case and is appointed by the City Council. The
14 Board is responsible for managing, administering, and controlling the Federated City Employees
15 Retirement System and the retirement fund. (California Constitution, art. XVI, sect. 17; San Jose
16 Municipal Code ("SJMC") § 3.28.100.) Action on the part of the Board is required in order to bring
17 the Federated City Employees Retirement System within compliance with Measure B.

18 IV. FACTUAL ALLEGATIONS

19 A. THE FEDERATED CITY EMPLOYEES RETIREMENT SYSTEM

20 31. Prior to Measure B, and at all times relevant hereto, the City Charter provided for a
21 defined benefit pension plan, and set forth a duty on the part of the City to "create[], establish[] and
22 maintain[] ... a retirement plan or plans for all [of its] officers and employees...." (Charter § 1500.)

23 32. The Charter further prescribed the minimum benefits due to its non-excluded
24 miscellaneous employees and required the City Council to provide for pension and other benefits
25 through ordinance. (Charter § 1505.) It also stated that in its discretion, the City Council "may grant
26 greater or additional benefits." (Charter § 1505(e).)

27 33. Pursuant to duly-enacted ordinances, Defendant adopted and established a Federated
28 City Employees Retirement System providing for certain benefits for covered employees. Such

ordinances, and other laws of the City and State, further provide for the establishment of a Retirement Board to oversee and administer pension benefits for covered employees.

34. The terms and conditions of the plan of benefits prescribed by, and adopted under, these auspices is hereinafter referred to as the "Retirement System," "Federated System," or "System."

35. Generally, full-time miscellaneous employees become members of the System upon acceptance of employment with the City.

36. Prior to Measure B, the System was funded by contributions from both members and the City under the proportions set forth in the Charter. However, member or employee contributions were never assessed or required with respect to the System's unfunded liabilities; rather members only were responsible for contributing towards the "normal cost"¹ of their annually-earned benefits.

37. Therefore, prior to Measure B, the City Charter provided that the funding of benefits under the system was to be computed annually with respect to the normal cost of each employee-member's annual benefit accrual: the Charter and City Ordinances provide that "any [non-excluded] retirement fund, system or plan for or because of current service or current service benefits ..., in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for [miscellaneous] employees to eight (8) for the City." (Charter § 1505(c); § SJMC 3.28.710.)

38. Under the System, member contributions are made only on account of current service rendered (SJMC § 3.28.710), excepting limited circumstances – not relevant here – where employees may make additional contributions to purchase "prior service credit"². (SJMC §§ 3.28.730, 3.28.740.) Again, members are not and have never been required to make contributions into the System to cover their own or others' unfunded liabilities.

39. Instead, under the Charter, the City has been responsible for ensuring payment of shortfalls between the plan's assets and the actuarially-determined liability for all benefits owed by

¹ The normal cost is the actuarially determined cost of new benefits earned each year by active participants.

² Meaning the purchase of pension credit for years of City service that did not qualify for pension membership

1 the System. Such difference, actuarially determined, represents the System's "unfunded liability,"
2 which fluctuates depending on the System's investment and demographic experience.

3 40. While the City is required to make current service and limited prior service
4 contributions into the retirement system on behalf of members (SJMC §§ 3.28.850, 3.28.890), it is
5 and has been obligated to cover the unfunded liabilities of the retirement system (SJMC § 3.28.880.)

6 41. The form of benefit promised by the City and provided under the System to
7 Petitioner's members was a defined benefit consisting of 2.5% of compensation multiplied by the
8 particular employee's years of employment with the City for which the employee is eligible for credit
9 under the System (i.e. "covered" or "credited" service). The defined benefit also included a
10 guaranteed cost of living adjustment, or "COLA," consisting of a 3% annual increase in the pension
11 benefit.

12 42. Although the right to earn and receive such a defined benefit accrues upon accepting
13 and continuing employment under the System, members become eligible to receive such defined
14 benefit on the earlier of reaching age 55 and completing five years of covered service, or completing
15 a full 30 years of service regardless of age. (SJMC 3.28.1110(A).)

16 43. Under the System, members who become disabled and unable to perform their duties
17 are entitled to a disability retirement benefit.

18 44. The City and the System also provide for payment and funding of health benefits for
19 Federated System retirees.

20 45. To qualify for retiree health benefits, a member must retire under the System and have
21 at least fifteen years of service or receive an allowance that is at least 37.5% of final compensation.
22 Furthermore, a retiree may be eligible for benefits if he/she "[w]ould be receiving an allowance equal
23 to at least [37.5%] of [his/her] final compensation [] if the workers' compensation offset ... did not
24 apply." (SJMC 3.28.1950(A)(3).) If a retiree qualifies for the plan, the retirement system pays one
25 hundred percent of the lowest cost plan that is available to active City employees. If a retiree does
26 not choose the lowest cost plan, he/she must pay the difference between that premium and the
27 premium for the lowest cost plan.
28

46. To qualify for retiree dental benefits, a member must retire for disability or service and either have credit for five years of service or more or receive an allowance that is at least 37.5% of final compensation. Furthermore, a retiree is eligible for benefits if he/she "would be receiving an allowance equal to at least [37.5%] of [his/her] final compensation [] if the workers' compensation offset ... did not apply...." If a retiree qualifies for the plan, the retirement fund pays one hundred percent of that members' premiums to an eligible dental plan.

47. The City and the System also provide for a Supplemental Benefit Retiree Benefit Reserve (“SRBR”) for the benefit of retired members, survivors of members, and survivors of retired members retired members. If the balance remaining in the Plan’s income account [after payment of administrative costs and expenses of the retirement System for the applicable fiscal year] is greater than zero, the [B]oard ... transfer[s] ten percent of the excess earnings to the [SRBR], and [] transfer[s] the remaining ninety percent of the excess earnings to the general reserve.” (SJMC 3.28.340(D).) Furthermore, interest on these funds and excess funds are deposited in the SRBR.

B. MEASURE B

48. Measure B seeks to reduce the retirement security of Petitioner's members while simultaneously shifting obligations and debts already incurred by the City unto a small class of individuals, including Petitioner's members.

49. Measure B further seeks to punish members who either challenge its legality or resist the reduction of the retirement benefit to which they are vested and entitled. Specifically, Section 1514-A of Measure B provides that if any of Measure B's terms are "determined to be illegal, invalid or unenforceable as to Current Employees[,]" current employees' salaries shall be reduced by "an equivalent amount of savings."

Suspension and Reduction of COLA Provision

50. With respect to the COLA component of the System's defined retirement benefit, Measure B authorizes the City Council to eliminate or "suspend" payment of the COLA. By its terms Measure B provides the City Council with discretion to suspend the COLA for a period of five years and thereafter may reduce by half the COLA benefit, or continue the suspension.

1 51. Prior to Measure B, miscellaneous employees enjoyed a vested right to an annual three
2 percent increase to their pension benefit after retirement. This served the purpose of ensuring that a
3 retiree's pension kept pace with inflation. (SJMC § 3.400.160.) (It should be noted that System
4 members do not participate in the federal Old Age, Survivor and Disability Insurance (OASDI)
5 program administered by the Social Security Administration, which of course includes a COLA
6 component).

7 52. The COLA component of the System's retirement benefit has been funded by
8 employee and City contributions. Specifically, the normal cost of the COLA component is funded by
9 contributions from members and the City on the same three to eight ratio basis as has been applied to
10 the primary pension benefit. (SJMC § 3.44.00.)

11 53. Measure B, however, provides that the City Council is authorized to suspend COLA
12 payments "in whole or in part" until (and if) "[the City Council] determines that the fiscal emergency
13 has eased." (Section 1510-A). Upon information and belief, such provision applies equally to current
14 employees who retire prior to the adoption of any such resolution suspending the COLA.

15 54. Measure B further provides, that "in the event" the City Council "restores all or part of
16 the COLA" it shall not exceed 3% for "current employees" or "1.5% for Current Employees who
17 opted into the VEP" (*Id.*), and it may only be restored prospectively.

18 55. Measure B therefore reduces vested retirement benefits in the form of permitting
19 elimination and reduction of COLA for both current and future retirees.

20 *Elimination of the Supplemental Benefit Retiree Benefit Reserve ("SRBR")*

21 56. Measure B eliminates of the System's Supplemental Benefit Retiree Benefit Reserve
22 ("SRBR").

23 57. Prior to Measure B, in the event the System had a balance in its operating account
24 after payment of administrative costs and expenses of the retirement System for the applicable fiscal
25 year, the Board of Retirement was required to "transfer ten percent of the excess earnings to the
26 [SRBR], and [to] transfer the remaining ninety percent of the excess earnings to the general reserve."
27 (SJMC 3.28.340(D).) Furthermore, interest on funds and excess funds were deposited in the SRBR.
28

1 58. Funds were held in the SRBR for the benefit of retired members, survivors of
2 members, and survivors of retired members.

3 59. Measure B eliminates the SRBR and transfers the assets held in such account to the
4 System's general fund.

5 Changes to the Obligation to Fund City Employee Retirement Programs

6 60. Measure B transfers to employees the responsibility for funding, in part, the System's
7 previously-incurred unfunded liability. Such an obligation has not, heretofore, existed on the part of
8 System members or employees. As set forth above, the Municipal Code and Charter have
9 exclusively placed responsibility on the City for any such incurred liabilities.

10 61. Specifically, in order to retain their vested entitlement to receive their pension
11 benefits, members must personally agree to assume a *pro rata* portion of up to 50% of the City's
12 obligation for the System's unfunded liabilities, in addition to their obligation to make payment of the
13 normal cost of their annual accrued benefits.

14 62. The obligation to assume half of the City's responsibility for financing the System's
15 unfunded liabilities has been computed by the City to equal approximately 16% of gross pay and,
16 accordingly, Measure B caps this obligation at 16% of an employee's gross pay.

17 63. Employees who decline the obligation to assume the City's debt in this manner, under
18 Measure B, are placed into a "Voluntary Election Plan" or "VEP." Such employees, and only those
19 employees who wish not to, or are economically unable to, relinquish their earned and promised
20 pension benefits must, on a going forward basis, pay to the city an excise or assessment against their
21 wages. Measure B designates such funds towards payment of the City's general obligations
22 associated with its accrued past pension liabilities. Those employees who cannot afford to pay the
23 City's excise of 16% of their wages are forced to accept a reduction in their vested right to receive
24 their pension benefits and promised level of retirement security.

25 64. Specifically, with respect to employees who decline to assume a portion of the City's
26 obligation for the System's unfunded liabilities, or are unable to afford the excise imposed against
27 them: The VEP imposes a lower accrual rate for benefits; imposes a later retirement age; increases
28 the years-of-service retirement eligibility gradually each year, indefinitely and with no limit; reduces

1 and caps the annual COLA; redefines the term “final compensation” to exclude the member’s
2 compensation that would otherwise have been included in computing the member’s pension; and
3 redefines to the member’s disadvantage the criteria applied to disability retirements.

4 65. The amount of the wage excise is unrelated to the particular employee’s cost of benefits
5 and is not particularized to the employee.

6 66. Measure B’s VEP does not present members with a “voluntary” option, as the exercise
7 of such choice is neither volitional nor free from coercion or duress.

8 67. Further, although accepting imposition of the VEP may be more advantageous than
9 remaining in the System as amended by Measure B, both “options” require members to accept a
10 reduction in their vested right to receive promised retirement benefits upon retirement. Those that
11 cannot afford to pay upwards of 16% of their wages to the City’s unfunded liability are required to
12 forego their earned and promised pension rights.

13 68. Prior to Measure B, the City’s miscellaneous employees had the right to retire on the
14 earlier of reaching age fifty-five or working for the City for thirty years. (*See, e.g.*, SJMC §
15 3.28.1110(A).)

16 69. Specifically, a member’s annual service retirement “allowance” – or benefit – was
17 computed with respect to his/her final compensation, which was defined as the “highest average
18 annual compensation earnable by the member during any period of twelve consecutive months of
19 federated city service....” (SJMC § 3.28.030.11.) Such a full service retirement benefit was
20 computed as 2.5% of such final compensation per year of service. Furthermore, one year of service
21 was defined as “1,739 or more hours of federated city service rendered by the member in any
22 calendar year.” (SJMC § 3.28.6809(B).)

23 70. Employees who are unable to shoulder the City’s obligation for the System’s
24 unfunded liabilities must accept, under the VEP, a reduced benefit accrual rate of two percent of final
25 compensation; an increased retirement age of sixty-two; an ever-increasing years-of-service
26 retirement (which increases by six months each year, starting in July of 2017); a reduced COLA of
27 1.5%; “final compensation” redefined as “the average annual pensionable pay of the highest *three*
28

1 consecutive years of service”; and an increase in the definition of a year of service to 2,080 hours.
2 (Section 1507-A (emphasis added).)

3 Changes to the System's Disability Retirement Benefit

4 71. Measure B redefines the term “disability” with respect to current employees in a
5 manner that reduces such employees’ eligibility for a disability retirement under the System. It
6 further reduces the right to a disability retirement benefit for employees required to enroll into the
7 VEP.

8 72. Specifically, Measure B reduces the maximum benefit that a disabled retiree may
9 receive, reduces the categories of compensation for purposes of computing the benefit; and reduces
10 the annual COLA.

11 73. Prior to Measure B, a miscellaneous employee qualified for a “disability retirement” if
12 his/her “disability ... render[ed] the member physically or mentally incapable of continuing to
13 satisfactorily assume the responsibilities and perform the duties and functions of the position then
14 held by him and of any other position in the same classification of positions to which the city may
15 offer to transfer him, as determined by the retirement board on the basis of competent medical
16 opinion.” (SJMC § 3.28.1210.) Prior to Measure B, disabled employees who could fill such positions
17 were nevertheless entitled to a disability retirement if no such position existed or was open.

18 74. Further, members who retire because of a service-connected disability were, prior to
19 Measure B, permitted an “annual allowance” of no less than forty percent of their compensation plus
20 2.5% for each year of service beyond sixteen, to a maximum of seventy-five percent of the member’s
21 final compensation. (SJMC § 3.28.1280.)

22 75. With respect to non-service connected disabilities, miscellaneous employees who
23 became members of the System prior to September 1, 1998, were eligible for a non-service connected
24 disability retirement allowance equal to the normal retirement allowance less half a percent for each
25 year the member is younger than age fifty-five. All other members receive an allowance of twenty
26 percent of final compensation plus two percent of final compensation for each year of service in
27 excess of six years, but less than sixteen years, plus 2.5% of final compensation for each year of
28

1 service credit in excess of sixteen years, up to seventy-five percent of the member's final
2 compensation. (SJMC § 3.28.1300.)

3 76. Prior to Measure B, disability retirees received an annual three percent COLA. (SJMC
4 §§ 3.44.010, 3.44.160.)

5 77. Measure B substantially impairs both the eligibility to receive and the substantive
6 benefits provided under the System's disability retirement provisions.

7 78. Specifically, Measure B redefines the term "Disability" for purposes of restricting
8 eligibility to receive a disability retirement. Measure B narrows the definition to apply only to
9 employees whose disability "has lasted or is expected to last for at least one year or to result in death"
10 and "cannot perform any other jobs described in the City's classification plan because of his or her
11 medical condition(s)... regardless of whether there are other positions available at the time a
12 determination is made." (Section 1509-A (emphasis added).)

13 79. Thus, under Measure B, a member who suffers debilitating injury may be denied a
14 disability benefit if she can theoretically perform the functions of any classification, even if there is
15 no vacancy available to accommodate such employee.

16 80. Measure B also reduces the disability benefit provided under the System.
17 Specifically, service-connected disability retirees receive fifty percent "of the average annual
18 pensionable pay of the highest three consecutive years of service." Further, employees become
19 eligible for non-service connected disability retirement benefits after five years of service with the
20 City, computed at two percent times final compensation, defined as the average highest three
21 consecutive years. Such an employee may receive a minimum and maximum non-service connected
22 disability retirement of twenty percent and fifty percent, respectively. (Section 1507-A(e).)

23 81. Under Measure B the disability retirement COLA is reduced to 1.5%.

24 82. Furthermore, Measure B shifts the responsibility for determining eligibility for
25 disability retirement benefits from the Board to "an independent panel of medical experts" subject to
26 a "right of appeal to an administrative judge."

27 ///

28 ///

1 Funding of the City's Retiree Health Obligations

2 83. Pursuant to the SJMC, members of the Federated System who satisfy certain
3 conditions related to service or disability retirement are entitled to receive retiree medical and dental
4 benefits. (SJMC §§ 3.28.1950, 3.28.2000.)

5 84. Members of the System enjoy a right to retiree healthcare benefits that is vested by
6 explicit or implied contract. Indeed, employees contribute to the cost of retiree health through their
7 own payroll deductions.

8 85. Retiree healthcare benefits are a form of deferred compensation for present service.

9 86. Retiree healthcare benefits are also provided as a result of written agreements between
10 the City and labor organizations, including Petitioner.

11 87. Prior to Measure B, AFSCME members have contributed to their retiree health
12 insurance on a one-to-one basis with the City.

13 88. Prior to Measure B the City has not, and did not, make contributions at a level
14 sufficient to fully prefund its retiree health obligations. Rather, the City paid for its retiree health
15 obligations through a "pay-as-you-go" method, utilizing both its own and employee contributions
16 towards providing health benefits to its retirees. Where such amounts were insufficient to pay the
17 city's health obligations, the City was responsible for such unfunded amounts.

18 89. Although active employees contributed in the form of payroll deductions towards the
19 costs of retiree healthcare, they were not responsible for funding the full cost of the Retiree
20 Healthcare Plan's ("RHC Plan") unfunded liabilities.

21 90. On information and belief, the City has developed an Annual Retirement Cost or
22 "ARC" that incorporates the City's predicted normal cost of retiree health obligations and the cost of
23 promised but unfunded benefits to current and future retirees (*i.e.* unfunded liabilities).

24 91. Beginning in or around 2009, the City imposed increasingly significant layoffs of its
25 employees and further reduced wages of those that remained by as much as twelve percent of
26 pensionable pay. As a result, the City's pay-as-you go method of funding its retiree health
27 obligations became untenable as the amount of employee contributions to the ARC necessarily
28 declined due to such layoffs and pay reductions. The City's actions further increased the pool of

1 retirees and consequently its retiree health obligations, as employees opted to retire rather than be
2 placed on lay-off or continue to work under significant pay reductions.

3 92. Measure B attempts to shift the City's obligation associated with previously-incurred
4 and promised retiree health benefits onto its current employees. Measure B seeks to make current
5 employees responsible not only for 50% of the normal cost of their annually-incurred retiree health
6 obligations, but also for the City's unfunded liabilities with respect to all of its retiree healthcare
7 obligations. (Measure B, § 1512-A(a) (making active employees responsible for contributing "a
8 *minimum* of [fifty percent] of the cost of retiree healthcare, including both normal cost and unfunded
9 liabilities").)

10 93. Upon information and belief, with respect to members of the Petitioner, such an
11 obligation imposes an excise on current employee compensation for the payment of the City's
12 general obligations.

13 94. Such excise is substantially greater than the amount of benefits each such employee is
14 expected to receive under the RHC Plan. As a result, such employees are paying for benefits
15 unassociated with their City service.

16 95. In addition, the excise is imposed for the stated purpose of paying the City's general
17 obligations, that is, the unfunded liabilities of the City retirement system

18 96. Measure B further attempts to set a framework to severely diminish the value of the
19 "low cost plan" to which members are entitled upon retirement.

20 97. Measure B also purports to "unvest" the right to retiree health notwithstanding the fact
21 that employee members of petitioner have directly contributed through payroll deduction to the cost
22 of such benefits. (Measure B, Section 1512-A(b) (stating "[n]o retiree healthcare plan or benefit shall
23 grant any vested right..."; providing City with right to "amend, change or terminate any [RHC P]lan
24 provision").) Such provision, as alleged below, is an unconstitutional taking and impairment of
25 contract, and violates due process, as guaranteed by the California Constitution.

26 98. Measure B also redefines the benefit provided under the RHP as "the medical plan
27 which has the lowest monthly premium available to any active employee in either the Police and Fire
28 Department Retirement Plan or [the System]." (Section 1512-A(c).) This effectively fixes employee

benefits to the lowest cost plan City-wide, whether or not that plan was bargained for or imposed upon a union other than AFSCME by the City.

99. As a result, Measure B reduces the expectations of Petitioner's members by reducing the amount of Retiree health premium payment available to them upon retirement.

Retroactive Shifting of Public Debt to a Small Class of Individuals

100. Measure B shifts a substantial burden onto current employees for the financing of the System's, Plan's, and the RHC Plan's unfunded liabilities.

101. Such unfunded liabilities represent the previously-incurred obligations of the City with respect to benefits earned by current and future retirees of the City.

102. With respect to the System, under Measure B, employees who refuse to forego their vested right to their pension benefit must make "additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to amortize any pension unfunded liabilities...." (Section 1506-A(b).)

103. The intent, purpose and effect of Measure B is to impose a fine on those employees who refuse to relinquish their constitutionally-protected right to receive their earned and promised pensions. By imposing such fine on only those who do not accept the City's demands to amend its pension obligations, the City is imposing a punishment or penalty on a select group of individuals.

104. Prior to Measure B, the City was and has been obligated to pay for any such unfunded liabilities. Further, until the VEP is implemented, Section 1506-A of Measure B governs all members of the System, obligating them to shoulder the City's debts related to the System's unfunded liabilities.

105. Similarly, if a court finds Section 1506-A(b) of Measure B to be "illegal, invalid or unenforceable" then the City is purportedly empowered to require employees to pay down the City's obligations for the System's unfunded liabilities. (Section 1514-A of Measure B.)

106. Measure B places on current employees the responsibility of funding the cost of their benefits in addition to the unfunded liabilities not associated with their own service, including the already-accrued retiree health benefits obligations and the benefits payable to current retirees.

107. Measure B requires a small class of individuals, namely current employees with respect to the RHC Plan and current employees who refuse to forego their vested benefits under the System's VEP plan, to retroactively fund liabilities of the public.

108. Measure B improperly imposes on members an obligation to fund a portion of the City's general obligations.

109. Measure B imposes severe retroactive liability on a limited class of parties that could not have anticipated such liability, and in a substantially disproportionate manner.

110. Moreover it does so for the purpose of punishing those who refuse to relinquish their constitutionally-protected right to receive the pension they have earned and were promised. There are fairer and easier methods of achieving the same result the City seeks to achieve here through the imposition of a wage fine or excise.

111. Under the California constitution such retroactive legislation deprives individuals of legitimate expectations and upsets settled transactions.

112. Retroactive lawmaking is of particular constitutional concern because of its use, as with Measure B, is a means of retribution against unpopular groups.

113. Measure B is further an improper imposition of public debt on a small group of individuals.

114. In that regard, Measure B is an unlawful retroactive law that violates the California Constitution's takings and due process clauses, and such Constitution's prohibition of *ex post facto* laws and bills of attainder.

VIII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Unconstitutional Impairment of Contract
(Cal. Const. Art. I § 9 and Cal. Civ. Code § 52.1³)

115. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

³ Plaintiff may sue in Superior Court for a violation of its members' constitutional rights pursuant to Civil Code Sect. 52-1.

1 116. California's Constitution, Article I, section 9, prohibits the state and its
2 instrumentalities, including the City, from passing a law that impairs the obligation of contracts
3 ("Contracts Clause").

4 117. Modifications to public employee retirement plans affecting current employees must
5 be reasonable under California's Contracts Clause. Changes can be reasonable only if (1) they bear
6 some material relation to the theory of a pension system and its successful operation and (2) changes
7 in a pension plan that result in a disadvantage to employee are accompanied by comparable new
8 advantages.

9 118. Miscellaneous employees enjoy vested contractual rights to the System, Plan, their
10 retirement benefits, and any enhancements implemented once they begin working with the City.

11 119. Measure B substantially impairs these rights without providing a comparable
12 advantage.

13 120. Under California law, these principles apply to changes in the method of funding of
14 pension systems, and such changes cannot be imposed on members to their disadvantage, when there
15 is no corresponding advantage.

16 121. Measure B, and the funding mechanisms providing for reduction in wages and shifting
17 of liabilities to a small class of individuals who derive no benefits from such liabilities, is contrary to
18 the theory of a pension system.

19 122. Measure B interferes and impairs those contractual rights in a way that is
20 unreasonable.

21 123. Measure B's provisions bear no material relation to the theory of a retirement system
22 or its successful operation; they simply allow the City to escape from its obligation to provide its
23 employees with these form of deferred compensation with which it previously enticed them into its
24 employ.

25 124. Measure B's provisions harm the effected employees without providing them with any
26 comparable advantage, commensurate benefit, or compensation.

27 125. Therefore, Measure B violates Article I, Sect. 9 of the California Constitution as it
28 applies to existing plan participants and is unconstitutional.

EIGHTH CAUSE OF ACTION
Promissory Estoppel and Equitable Estoppel

207. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

208. Promissory estoppel serves as consideration in order to enforce a bargained-for agreement. That is, the reliance on a promise made by one party serves as a basis to enforce such promise in law or equity.

209. Estoppel applies to claims against the government, particularly where the application of the doctrine would further public policies and prevent injustice.

210. The City, through its Municipal Code, Charter and communications with employees and their labor organizations represented that employees were not liable to finance public debt, or the System's or RHC Plan's unfunded liabilities.

211. The City further represented that employees would earn benefits and have the right to receive a certain level of benefits. In reliance thereon, such members and employees accepted and continued in employment, and made payroll contributions of their own into the System and RHC Plan.

212. The City should have reasonably expected these promises to encourage the miscellaneous employees to accept employment with it and continue working for it until they qualified for service retirement.

213. The City violated these promises when it adopted Measure B by reducing benefits and shifted the burden of financing its unfunded liabilities upon miscellaneous employees.

NINTH CAUSE OF ACTION
REQUEST FOR DECLARTORY RELIEF
(Code of Civ. Pro. § 1060)

214. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

215. Measure B requires that the City Council adopt ordinances to "implement and effectuate [its] provisions...." Unless relief is granted, Measure B becomes effective immediately and sets as a goal that "such ordinances shall become effective no later than September 30, 2012."

216. An actual controversy has arisen and now exists between Plaintiff and Defendants as to Defendants' duties with respect to implementation of Measure B.

217. Plaintiff contends that Measure B violates the “Contracts Clause” and prohibition on “Bills of Attainder” (Cal. Const. art. I § 9), “Taking Clause” (Cal. Const. art. I § 19), “Due Process Clause” (Cal. Const. art. I § 7), “Pension Protection Act” (Cal. Const. Art. XVI § 17), prohibition on unlawful excises (Cal. Const. art. I § 7), and right to petition the courts (Cal. Const. art. I §§ 1, 2) pursuant to the state Constitution.

218. Plaintiff is informed and believes that the City disputes the allegations contained within this Complaint and Petition and contends that it has a legal duty to implement Measure B as a result of its adoption by the voters of Defendant City.

219. Plaintiff desires a judicial determination of their rights and a declaration of whether Measure B violates the aforementioned sections of the California Constitution, the City Charter, SJMC, and/or provisions of the Plan.

220. A judicial determination is necessary and proper at this time under these circumstances in order to determine the duties and obligations of the parties with respect to Measure B.

TENTH CAUSE OF ACTION
REQUEST FOR INJUNCTIVE RELIEF
(Code of Civ. Pro. §§ 525, 526, and 526(a))

221. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

222. Plaintiff and groups, residents, registered voters, and taxpayers of the City will suffer irreparable harm as a result of the City's expenditure of staff time and taxpayer funds in connection with implementation of Measure B.

223. Furthermore, members represented by AFSCME will suffer irreparable harm from the constitutional violations at issue.

224. Plaintiff can demonstrate a high-likelihood of success on the merits of its claim that Measure B violates the aforementioned provisions of the California Constitution, the City Charter, Municipal Code, and agreements between the parties.

225. Plaintiff has no plain, speedy, or adequate remedy at law.

226. Plaintiff's members will suffer irreparable harm in the event the City is not enjoined from implementing Measure B.

227. The injunctive relief Plaintiff seeks is prohibitory in nature, and it seeks to restrain and/or prohibit Defendant City from taking any steps to implement, enforce, or otherwise give effect to Measure B.

ELEVENTH CAUSE OF ACTION
PETITION FOR WRIT OF MANDATE
(Code of Civ. Pro. § 1085)

228. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

229. Respondent City, and those public officers and employees acting by and through its authority — including Necessary Party in Interest — have a clear, present, and ministerial duty to implement only those ordinances and regulations that are not in conflict with the California Constitution. Respondent City has failed to perform its duty to comply with those requirements to the extent it intends to implement the provisions of Measure B.

230. Measure B violates Const. art. I, sects. 1, 2, 7, 9, 19; Const. art. XVI, sect. 17 of the California Constitution; the City Charter; the SJMC; and the terms of the Plan.

231. Petitioner is beneficially interested in a peremptory writ of mandate to compel Respondent City, and those public officers and employees acting by and through its authority, to perform their duties imposed by law, including refraining from implementing the provisions of Measure B.

232. Plaintiff has no plain, speedy or adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Petitioner prays for the following relief:

1. A declaration that Measure B cannot be applied to the AFSCME members working for the City on or before June 5, 2012;

1 2. A declaration ordering defendants and respondents to not apply the terms of Measure B
2 against petitioner-plaintiff's members currently in the City's employ, and restoring to such employees
3 all rights and benefits purportedly abridged by Measure B.

4 3. A permanent injunction prohibiting the defendants and petitioners from applying or
5 otherwise enforcing any part of Measure B against members working for the City before June 5,
6 2012;

7 4. A peremptory writ mandating defendants and respondents and the Board to apply all Plan
8 provisions, rights and benefits in effect before June 5, 2012, to AFSCME members and prohibiting
9 the application or implementation of Measure B to them;

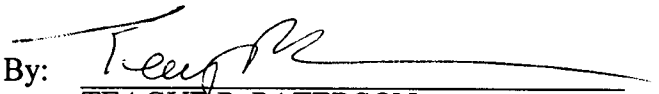
10 5. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5,
11 Government Code Section 800, or otherwise;

12 6. For costs of suit herein incurred; and,

13 7. For such costs and further relief as the Court deems just and proper.

14
15 Dated: February 8, 2013

BEESON, TAYER & BODINE, APC

16
17 By: 
18 TEAGUE P. PATERSON
19 VISHTASP M. SOROUSIAN
Attorneys for Plaintiff and Petitioner
AFSCME LOCAL 101

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDAMUS**

☒ **By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☐ **By Personally Delivering** a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

☐ **By Messenger Service** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure § 1011, by placing a true and correct copy thereof in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service.


☐ **By UPS Overnight Delivery** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

☐ **By Facsimile Transmission** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

☐ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, February 11, 2013.



Tanya Gatt

EXHIBIT F

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Attorneys for Plaintiffs/Petitioners San Jose Retired
Employees Association

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

AT SAN JOSÉ

SAN JOSE POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSÉ, BOARD OF
ADMINISTRATION FOR POLICE AND FIRE
DEPARTMENT RETIREMENT PLAN OF
CITY OF SAN JOSE, and DOES 1-10,
inclusive,

Defendants.

Consolidated Case No. 1-12-CV-225926

*[Consolidated with Case Nos. 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574,
1-12-CV-227864, and 1-12-CV-233660]*

**ASSIGNED FOR ALL PURPOSES TO:
JUDGE PATRICIA LUCAS
DEPARTMENT 2**

**PLAINTIFF/PETITIONERS AFSCME
LOCAL 101'S AND SAN JOSE RETIRED
EMPLOYEES ASSOCIATION'S REQUEST
FOR JUDICIAL NOTICE OF
DOCUMENTS FOR TRIAL**

1 AND RELATED CROSS-COMPLAINT AND
2 CONSOLIDATED ACTIONS

Courtroom: 2
Judge: Hon. Patricia Lucas
Complaint Filed: July 5, 2012
Trial Date: June 22, 2013

3
4 **REQUEST FOR JUDICIAL NOTICE**

5 Plaintiff/Petitioners AFSCME Local 101 and the San José Retired Employees Association
6 hereby request the Court to take judicial notice pursuant to California Evidence Code Sections 450 *et*
7 *seq.*, and in accordance with California Rules of Court 3.1113, subdivision (l) and 3.1306,
8 subdivision (c), of the following material, which is included in the trial exhibit binders prepared by
9 AFSCME Local 101 and all references are to the trial exhibit numbers.

10 **1. U.S. Department of Social Security and U.S. Department of Labor Materials**
11 **(Plaintiffs' Exhibits 487, 500-505)**

12 Social Security publications prepared by the U.S. Department of Social Security
13 Administration, and the Consumer Price Indexes prepared by the U.S. Department of Labor are
14 properly subject to judicial notice pursuant to Evidence Code sections 453 and 452(c) ("Official acts
15 of the legislative, executive, and judicial departments of the United States and of any state of the
16 United States.") The documents issued by the U.S. Department of Social Security Administration and
17 the U.S. Department of Labor are an official act of the executive branch of the United States and,
18 therefore, judicial notice is appropriate. (*See, e.g., Carleton v. Tortosa* (1993) 14 Cal.App.4th 745,
19 753, fn. 1 (noting that handbook published by California Department of Real Estate showing general
20 areas tested on real estate brokers exam and code of ethics for licensees is an official act of the
21 executive department of the state); *Casella v. SouthWest Dealer Services, Inc.* (2007) 157
22 Cal.App.4th 1127, 1137 (judicial notice taken of article published by DMV regarding disclosure
23 requirements imposed on car dealers); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853,
24 fn. 3 (judicial notice of Attorney General's report on gasoline pricing proper as an official act of
25 executive department).) Further, judicial notice is proper pursuant to section 452(h), as the U.S.
26 Department of Social Security Administration and the U.S. Department of Labor publications are not
27 reasonably subject to dispute and are sources of indisputable accuracy.
28

2. **Federated City Employees Retirement System (“FCERS”) Board Resolutions** (Plaintiffs’ Exhibits 323-327, 643-645)
3. **FCERS Annual Reports, Actuarial Valuation, and Audit Reports** (Plaintiffs’ Exhibits 393-396, 398-420, 422, 522, 421-422, 650-652)
4. **FCERS Comprehensive Annual Board Letters** (Plaintiffs’ Exhibits 460-461, 464-465, 467-471, 473-477, 481)
5. **FCERS Handbooks** (Plaintiffs’ Exhibits 328-330, 636, 653, 655, 706 and 707)
6. **FCERS Fact Sheets** (Plaintiffs’ Exhibits 331-342)
7. **FCERS Brochures** (Plaintiffs’ Exhibits 343-345)
8. **FCERS Newsletters** (Plaintiffs’ Exhibits 346-357, 511-521)

The Federated City Employees Retirement System (“FCERS”) material referenced above (paragraphs 2-8) is properly subject to judicial notice pursuant to Evidence Code 453 and 452(b) (“Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.”). These documents have been reviewed and their authenticity has been confirmed. On July 15, 2013, the Court signed a Stipulation and Order Regarding the Authenticity of Retirement Board documents; AFSCME and the FCERS Board stipulated to the authenticity of all the FCERS Materials listed above. As such, the retirement systems’ publications of board resolutions, board letters, annual reports, general benefit information, and newsletters are not reasonably subject to dispute and come from sources of indisputable accuracy. (Evid. Code 452(h).)

Furthermore, the materials were previously submitted to FCERS members, the City of San Jose, and made publically available. In *Ampex Corp. v. Cargle*, 128 Cal.App.4th 1569, 1573, fn.2, the appellate court took judicial notice of Company’s posted SEC filings, press releases and letters because they “are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Here, the materials were similarly promulgated to various independent entities and thus, are not reasonably subject to dispute and are capable of immediate and accurate determination by independent sources.

///

1 Finally, agency resolutions, minutes, standing orders, manuals, and benefits booklets are
2 properly subject to judicial notice. (*See Requa v. Regents* (2012) 213 Cal.App.4th 213, 223 fn.7
3 (hereinafter “*Requa*”); *see also Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014,
4 1027 (“The Evidence Code also expressly provides for judicial notice of a public entity’s legislative
5 enactments and official acts. Thus, we may take judicial notice of local ordinances and the official
6 resolutions, reports, and other official acts of a city.”) (hereinafter “*Trinity*”))

7
8 **9. Documents from the Retirement Services Department of the City of San Jose**
9 (358-392, 478)

10 **10. Documents from the San Jose City Council and Staff** (397, 441-457, 472, 479,
11 480, 491, 708)

12 **11. San Jose City Auditor’s Report** (423)

13 The above-referenced documents (paragraphs 9-11) issued by the City of San Jose are
14 properly subject to judicial notice pursuant to Evidence Code sections 453 and 452(c) (“Official acts
15 of the legislative, executive, and judicial departments of the United States and of any state of the
16 United States.”) The documents were issued by the San Jose Department of Retirement Services, the
17 San Jose City Council, and the San Jose City Staff in their official capacity. The City of San Jose is a
18 municipal corporation of the state of California and therefore an instrumentality of the State. (*See*
19 *Reynolds v. Sims*, 377 U.S. 533, 575 (1964) (affirming that cities are “subordinate governmental
20 instrumentalities created by the State to assist in the carrying out of state governmental functions”);
21 *See also Broughton v. Pensacola*, 93 U.S. 266, 269 (1876) (holding that cities are instrumentalities
22 “so far as it is invested with subordinate legislative powers for local purposes”).) Therefore, material
23 it issues is properly subject to notice.

24 Further, judicial notice is proper pursuant to section 452(h), as there can be no dispute that the
25 documents were issued by the City of San Jose. It is well settled that agency resolutions, minutes,
26 standing orders, manuals, and benefits booklets are properly subject to judicial notice. (*See Requa*,
27 *supra*, 213 Cal.App.4th at 223 fn.7; *see also Trinity, supra*, 193 Cal.App.4th at 1027 (“The Evidence
28 Code also expressly provides for judicial notice of a public entity’s legislative enactments and official

1 acts. Thus, we may take judicial notice of local ordinances and the official resolutions, reports, and
2 other official acts of a city.”)

3 **12. Measure B, San Jose Charter Provision, Municipal Code Sections, and**
4 **Ordinances** (Plaintiffs’ Exhibits 523-525, 606, 610, 614, 618, 620, 622, 626, 628,
5 630, 649 and 701, 709-711)

6 The San Jose Municipal Code Sections and Ordinances are properly subject to judicial notice
7 pursuant to California Evidence Code section 453 and 452(b) (“Regulations and legislative
8 enactments issued by or under the authority of the United States or any public entity in the United
9 States.”); see also *Trinity, supra*, 193 Cal.App.4th at 1027 (“The Evidence Code also expressly
10 provides for judicial notice of a public entity’s legislative enactments and official acts. Thus, we may
11 take judicial notice of local ordinances and the official resolutions, reports, and other official acts of a
12 city.”).)

13 **13. Memoranda from City Official** (Plaintiffs’ Exhibits 637-642)

14 **14. Letters from Actuaries to Ed Overton** (Plaintiffs’ Exhibits 646, 705 and 648)

15 Exhibits 637 to 642 are Memoranda from various City Officials to City Council (637-638,
16 641-642), the Board of Administration for the Police and Fire Retirement System (643) or the Rules
17 and Open Government Committee (640). Exhibits 646, 705 and 648 are letters from actuaries hired
18 by the Federated City Employees Retirement System to Ed Overton, a former Director of Retirement
19 Services for the City of San Jose. All of these documents were produced by the City in response to
20 inspection demands served by parties in this action. Courts may take judicial notice of official acts
21 and public records. (*Aquila, Inc. v. Sup. Ct.* (2007) 148 Cal.App.4th 556, 569; *Mangini v. R.J.*
22 *Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063, overruled on other grounds by *In re Tobacco*
23 *Cases II* (2007) 41 Cal.4th 1257.) Furthermore, judicial notice is proper for these documents because
24 they are not reasonably subject to dispute. (Evidence Code Section 452(h).)

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1 For the foregoing reasons, Plaintiff/Petitioners respectfully requests this Court to take judicial
2 notice of the above-referenced attached hereto.

3
4 Dated: July 19, 2013

BEESON, TAYER & BODINE, APC

5
6 By: *Teague P. Paterson*

TEAGUE P. PATERSON

7 VISHTASP M. SOROUSHIAN

Attorneys for Plaintiff AFSCME LOCAL 101

8
9 Dated: July 19, 2013

SILVER, HADDEN, SILVER, WEXLER & LEVINE

10
11 By: *Jacob Kalinski* /VMS

JACOB KALINSKI

12 Attorneys for Plaintiff SAN JOSE RETIRED
13 EMPLOYEES ASSOCIATION
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California 94607-4051. On this day, I served the foregoing documents:

**PLAINTIFF/PETITIONERS AFSCME LOCAL 101'S AND SAN JOSE
RETIRED EMPLOYEES ASSOCIATION'S REQUEST FOR JUDICIAL
NOTICE OF DOCUMENTS FOR TRIAL**

☒ **By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.


Arthur A. Hartinger, Esq.
Geoffrey Spellberg, Esq.
Linda M. Ross, Esq.
Jennifer L. Nock, Esq.
Michael C. Hughes, Esq.
MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
Oakland, CA 94607

Attorneys for Defendants, THE CITY OF SAN JOSE AND DEBRA FIGONE

☒ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, July 19, 2013.



Tanya Gatt

SERVICE LIST

<p>Greg McLean Adam, Esq. Jonathan Yank, Esq. Gonzalo C. Martinez, Esq. Amber L. West, Esq. CARROLL, BURDICK & McDONOUGH LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104</p> <p><i>Attorneys for Plaintiff, SAN JOSE POLICE OFFICERS' ASSOCIATION (Santa Clara Superior Court Case No. 112CV225926)</i></p>	<p>Arthur A. Hartinger, Esq. Geoffrey Spellberg, Esq. Linda M. Ross, Esq. Jennifer L. Nock, Esq. Michael C. Hughes, Esq. MEYERS, NAVE, RIBACK, SILVER & WILSON 555 12th Street, Suite 1500 Oakland, CA 94607</p> <p><i>Attorneys for Defendants, THE CITY OF SAN JOSE AND DEBRA FIGONE</i></p>
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11 *OLSON, GARY J. RICHERT and ROSALINDA*
12 *NAVARRO (Santa Clara Superior Court Case No.*
13 *112CV233660)*